

United States
Circuit Court of Appeals

For the Ninth Circuit.

PUGET SOUND TRACTION, LIGHT & POWER
COMPANY, a Corporation,
Plaintiff in Error,
VS.

M. A. HUNT and MARY A. HUNT, His Wife,
Defendants in Error.

Transcript of Record.

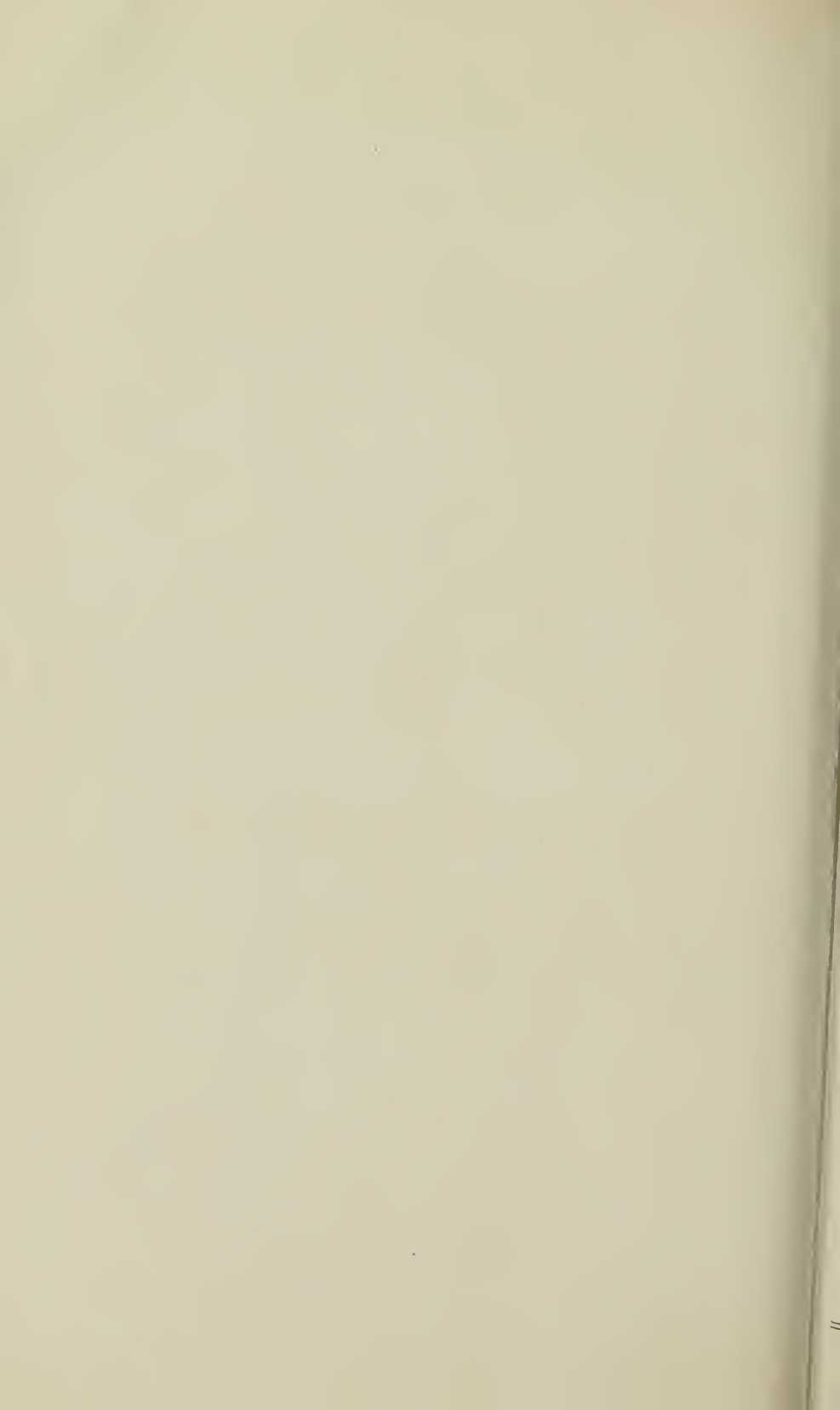
Upon Writ of Error to the United States District Court of
the Western District of Washington, Northern Division.

Filed

JAN 48 1915

F. D. Monckton,

Clerk.



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COMPANY, a Corporation,
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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*In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.*

No. 2700.

M. A. HUNT and MARY A. HUNT, His Wife,
Plaintiffs,

vs.

PUGET SOUND TRACTION, LIGHT & POWER
CO., a Corporation,
Defendant.

Names and Addresses of Counsel.

JAMES B. HOWE, Esq., Attorney for Plain-
tiff in Error, 403 Electric Building, Seattle,
Washington.

A. J. FALKNOR, Esq., Attorney for Plaintiff
in Error, 403 Electric Building, Seattle,
Washington.

T. F. BEVINGTON, Esq., Attorney for De-
fendant in Error, 907 American Bank
Building, Seattle, Washington.

F. E. HAMMOND, Esq., Attorney for Defend-
ant in Error, 602 Mutual Life Building,
Seattle, Washington.

J. M. HAMMOND, Esq., Attorney for Defend-
ant in Error, 602 Mutual Life Building,
Seattle, Washington. [1*]

*Page-number appearing at foot of page of original certified Record.

*In the Superior Court of the State of Washington in
and for the County of King.*

No. —.

M. A. HUNT and MARY A. HUNT, His Wife,
Plaintiffs,

vs.

PUGET SOUND TRACTION LIGHT & POWER
COMPANY, a Corporation,
Defendant.

Complaint.

Come now the plaintiffs and for their first cause
of action against the defendant, state:

COUNT I.

I.

That at all times hereinafter mentioned the plaintiffs were, and now are, husband and wife, living together as such with an established marital community, and residing at Seattle in King County, State of Washington.

II.

That at all times hereinafter mentioned, the defendant, Puget Sound Traction Light & Power Company was, and now is, a corporation, duly organized and existing under the laws of the State of Massachusetts, with the object and purpose of maintaining and operating a street railway in the City of Seattle, King County, Washington, and other places, with its principal place of business at Seattle, King County, Washington.

III.

That the plaintiffs on and prior to the 23d day of September, A. D. 1913, as such community, were the owners of, and running and operating an automobile for hire and for the benefit of said community, over the streets of Seattle, King County, Washington.
[2]

IV.

That the defendant, Puget Sound Traction Light & Power Company, a corporation, on and prior to said 23d day of September, A. D. 1913, was the owner of and operating a street-car system in the City of Seattle, King County, Washington.

V.

That on said 23d day of September, A. D. 1913, the plaintiff, M. A. Hunt, was in charge of and driving said automobile belonging to the said plaintiffs, on 27th Avenue, and was, while in the exercise of due care and caution on his part, approaching the intersection of 27th Avenue and East Cherry Street in Seattle, Washington.

VI.

That on said date, the defendant, in the operation of its street-car system, through its employees, was running and operating one of its street-cars on said East Cherry street, running the same from a westerly to an easterly direction thereon, approaching and crossing said intersection of 27th Avenue and East Cherry street. That at said time and place, the defendant, through its employees, was running said street car in a careless, negligent and reckless manner and as it approached and crossed the inter-

section of said street, in this, they were carelessly and negligently running said street car at an exceedingly high, dangerous and unlawful rate of speed. That they carelessly and negligently failed to ring a bell or gong or give any warning of the approach of said street car at said crossing. That they carelessly and negligently failed and neglected to put on any brakes, check or in any manner reverse or stop said street car as it approached and crossed the intersection of said streets, or in any other manner give a warning of its approach. That at said time and place, the defendant and its employees were further negligent in that they were operating and running said street car at a rate of speed in excess of twelve (12) miles per hour in violation of Ordinance No. 24597, passed the 11th day of July, A. D. 1910, entitled: "An Ordinance regulating travel and traffic on the streets of the City of Seattle, providing penalties for the violation thereof, and repealing Ordinances [3] or parts of Ordinances in conflict therewith." That in addition to the negligence of the defendant and its employees as aforesaid, they were careless and negligent in this; that said defendant failed to stop said street car, although it could have done so, after the plaintiff, M. A. Hunt, in the operation and running of the automobile, as aforesaid, as it approached said crossing on 27th Avenue, had reached a point where said automobile and said M. A. Hunt, as the driver thereof, were in plain view and after the Motorman operating said defendant's street car saw said automobile and the driver thereof, or in the exercise of ordinary care and prudence could have seen said automobile and driver

thereof, and said Motorman in charge of said street car could have avoided the collision and injuries herein complained of, which said defendant and its Motorman carelessly and negligently failed to do.

VII.

That at said time and place and in broad day light at the hour of about 11:00 o'clock A. M., September 23d, A. D. 1913, by reason of the carelessness and negligence of the defendant and its employees as aforesaid, the automobile of the plaintiffs', when it had come to a full stop, at a point near the tracks of the defendant company, on East Cherry street, was hit by the said street car of the defendant Company, to wit: Street Car No. 361, by reason of which, said automobile was badly broken and damaged, and by reason thereof the plaintiffs were deprived of the use of said automobile for the period of thirty-eight (38) days. That the damage to said automobile and the reasonable costs of the repair thereof, was and is of the actual value of Five Hundred Twenty-nine and $73/100$ (\$529.73) Dollars. That the loss of the use of said automobile, which was being used by the plaintiffs for hire, was and is of the reasonable value of Ten (\$10.00) Dollars per day, or the aggregate sum of Three Hundred and Eighty (\$380.00) Dollars, and in all the full sum of Nine Hundred Nine and $73/100$ (\$909.73) Dollars. That although demand has been made [4] therefor, defendant has neglected and refused to pay the plaintiffs said sum, and there is now due and owing the plaintiffs from the defendant on account thereof, the sum of Nine Hundred Nine and $73/100$ (\$909.73) Dollars, no part

of which has been paid.

PLAINTIFFS for their further and second cause of action against the defendant, state:

COUNT II.

I.

That at all times hereinafter mentioned the plaintiffs were, and now are, husband and wife, living together as such with an established marital community, and residing at Seattle in King County, State of Washington.

II.

That at all times hereinafter mentioned, the defendant, Puget Sound Traction Light & Power Company was, and now is, a corporation, duly organized and existing under the laws of the State of Massachusetts, with the object and purpose of maintaining and operating a street railway in the City of Seattle, King County, Washington, and other places, with its principal place of business at Seattle, King County, Washington.

III.

That the plaintiffs on and prior to the 23d day of September, A. D. 1913, as such community, were the owners of and running and operating an automobile for hire and for the benefit of said community, over the streets of Seattle, King County, Washington.

IV.

That the defendant, Puget Sound Traction Light & Power Company, a corporation, on and prior to said 23d day of September, A. D. 1913, was the owner of and operating a street car system in the City of Seattle, King County, Washington. [5]

V.

That on said 23d day of September, A. D. 1913, the plaintiff, M. A. Hunt, was in charge of and driving said automobile belonging to the said plaintiffs, on 27th Avenue, and was, while in the exercise of due care and caution on his part, approaching the intersection of 27th Avenue and East Cherry street in Seattle, Washington.

VI.

That on said date, the defendant, in the operation of its street car system, through its employees, was running and operating one of its street cars on said East Cherry street, running the same from a westerly to an easterly direction thereon, approaching and crossing said intersection of 27th Avenue and East Cherry street. That at said time and place, the defendant, through its employees, were running said street car in a careless, negligent and reckless manner and as it approached and crossed the intersection of said street, in this, they were carelessly and negligently running said street car at an exceedingly high, dangerous and unlawful rate of speed. That they carelessly and negligently failed to ring a bell or gong or give any warning of the approach of said street car at said crossing. That they carelessly and negligently failed and neglected to put on any brakes, check or in any manner reverse or stop said street car as it approached and crossed the intersection of said streets, or in any other manner give a warning of its approach. That at said time and place, the defendant and its employees were further negligent in that they were operating and running said street car at

a rate of speed in excess of twelve (12) miles per hour in violation of Ordinance No. 24597, passed the 11th day of July, A. D. 1910, entitled : "An Ordinance regulating travel and traffic on the streets of the City of Seattle, providing penalties for the violation thereof, and repealing Ordinances or parts of Ordinances in conflict therewith." That in addition to the negligence of the defendant and its employees as aforesaid, they were careless and negligent in this; that said defendant failed to stop said street car, although it could have done so, after the [6] plaintiff, M. A. Hunt, in the operation and running of the automobile, as aforesaid, as it approached said crossing on 27th Avenue, had reached a point where said automobile and said M. A. Hunt, as the driver thereof, was in plain view and when the Motorman on said defendant's street car saw said automobile and the driver thereof, or in the exercise of ordinary care and prudence could have seen said automobile and the driver thereof, said Motorman carelessly and negligently failed to check or stop said street car and thereby avoid the collision and injuries herein complained of, all of which said defendant and its Motor man could have done by the exercise of due care and caution.

VII.

That at said time and place and in broad day light at the hour of about 11:00 o'clock A. M., September 23d, A. D. 1913, by reason of the carelessness and negligence of the defendant and its employees as aforesaid, the automobile of the plaintiffs', when it had come to a full stop, at a point near the tracks of

the defendant company, on East Cherry Street, was hit by the street car of the defendant Company, to wit: Street Car No. 361, and the plaintiff, M. A. Hunt, without any fault or negligence on his part, while driving and operating said automobile and seated therein, by reason of said car striking said automobile, was greatly shocked, strained, bruised and injured. That said injuries were to the back, spine and particularly in the cervical and lumbar regions of the spine. That the 10th, 11th and 12th ribs on the right side of said plaintiff, M. A. Hunt, were badly bruised and injured and the cartilage torn therefrom. That the pleura covering the vitals, especially on the right side of said plaintiff, M. A. Hunt, was badly injured, causing what is known as traumatic pleurisy. That the abdomen of the plaintiff, M. A. Hunt, was badly bruised, and that by reason of said collision and through the defendant's negligence, said plaintiff, M. A. Hunt, sustained various other dangerous and painful injuries in and on various parts of his body, and has been permanently injured. [7]

VIII.

That as a result of said negligence on the part of the said defendant company, and the injuries resulting to said plaintiff, M. A. Hunt, said Hunt was rendered unconscious for a period of five (5) days and was confined to his home for a period of four weeks, being confined to his bed most of that time. That by reason of said negligence and the injuries sustained, the plaintiff, M. A. Hunt, in addition to the injuries above enumerated, was greatly shocked, and has ever since suffered and is still suffering great physical

pain and mental anguish, and will continue to suffer from the same for a long time in the future.

IX.

That the plaintiffs have been compelled to and did incur for medical services rendered, and medicine to date, the sum of Seventy-five (\$75.00) Dollars, and the further charges for future services for Doctors and medicine will be a sum not less than Seventy-five (\$75.00) Dollars, which are the direct and proximate result of the defendant's said negligence and carelessness.

X.

That by reason of said negligence of the defendant Company, as aforesaid, and the injuries sustained by the plaintiff, M. A. Hunt, the plaintiffs thereby have lost to date the time and services of the plaintiff, M. A. Hunt, for a period of One Hundred and twenty (120) days, which were and are of the reasonable value of Fifteen (\$15.00) per day, or of the aggregate value of Eighteen Hundred (\$1800.00) Dollars.

XI.

That by reason of said negligence of the defendant Company, as aforesaid, and said injuries sustained by said plaintiff, M. A. Hunt, the plaintiffs have been damaged on account of future loss of time and services, and for said injuries, physical and mental pain and anguish, and permanent injuries to said plaintiff, M. A. Hunt, in the further sum of Five Thousand (\$5000.00) Dollars, no part [8] of which has been paid; and the plaintiffs allege that all and singular the damages and injuries suffered by the said plaintiffs as hereinbefore set forth, was and is the

direct and proximate cause of the carelessness and negligence of the defendant Company.

WHEREFORE, the plaintiffs ask and pray for judgment against the defendant for the sum of Nine Hundred Nine and 73/100 (\$909.73) Dollars on account of plaintiffs' first cause of action, and for the sum of Six Thousand Nine Hundred and Fifty (\$6950.00) Dollars on account of plaintiffs' second cause of action, or for the total sum of Seven Thousand Eight Hundred Fifty-nine and 73/100 (\$7859.73) Dollars on both causes of action, and for their costs and disbursements herein.

T. F. BEVINGTON,
HAMMOND & HAMMOND,
Attorneys for Plaintiffs.

State of Washington,
County of King,—ss.

M. A. Hunt, being first duly sworn, on oath deposes and says; That he is one of the plaintiffs in the above entitled action; That he has read the foregoing complaint, knows the contents thereof, and that the same and the statements therein made are true as he verily believes.

M. A. HUNT.

Subscribed and sworn to before me this 23d day of January, A. D. 1914.

EDWARD VONTABLE,
Notary Public in and for the State of Washington,
Residing at Seattle.

Filed in Clerks Office, Feb. 10, 1914. W. K. Sickels, Clerk. By F. W. Smith, Deputy.

[Indorsed]: Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Mar. 10, 1914. Frank L. Crosby, Clerk. By E. M. L. Deputy. [9]

*In the District Court of the United States for the
Western District of Washington, Northern
Division.*

No. 2700.

M. A. HUNT and MARY A. HUNT, His Wife,
Plaintiffs,

vs.

PUGET SOUND TRACTION, LIGHT & POWER
COMPANY, a Corporation,
Defendant.

Answer.

Comes now the defendant and for answer to the first cause of action set up in the complaint of the plaintiffs herein alleges:

I.

For answer to the allegations of Paragraph I of Count I of plaintiffs' complaint, this defendant denies any knowledge or information thereof sufficient to form a belief.

II.

For answer to the allegations of Paragraph II of Count I of plaintiffs' complaint, this defendant admits the same.

III.

For answer to the allegations of Paragraph III of

Count I of plaintiffs' complaint, this defendant denies the same.

IV.

For answer to the allegations of Paragraph IV of Count I of plaintiffs' complaint, this defendant admits the same.

V.

For answer to the allegations of Paragraph V of [10] Count I of plaintiffs' complaint, this defendant admits that on the 23d day of September, 1913, the plaintiff, M. A. Hunt, was in charge of and driving an automobile on Twenty-seventh Avenue, but denies each and every other allegation therein contained.

VI.

For answer to the allegations of Paragraph VI of Count I of plaintiffs' complaint, this defendant denies the same.

VII.

For answer to the allegations of Paragraph VII of Count I of plaintiffs' complaint, this defendant denies the same and particularly denies that the plaintiffs, or either of them, have been damaged in the sum of Nine Hundred and Nine and 73/100 Dollars (\$909.73), or in any other sum or at all.

For a further answer and first affirmative defense to said Count I of plaintiffs' complaint, this defendant alleges that whatever damages, if any, the plaintiffs, or either of them, received were caused and contributed to by the careless and negligent acts of the plaintiff M. A. Hunt.

For a further answer and second affirmative de-

fense to said Count I of plaintiffs' complaint, this defendant alleges that on the 23d day of September, 1913, the plaintiffs had but a contract to purchase said automobile, upon which said 23d day of September, 1913, Four Hundred Dollars (\$400.00) had been paid upon said contract of purchase, and that since said date on account of the failure and neglect of the plaintiffs to pay the contract price the contract has been forfeited and the machine taken back by the vendor. [11]

For answer to the further and second cause of action set up in plaintiffs' complaint this defendant alleges:

I.

For answer to the allegations of Paragraph I of Count II of plaintiffs' complaint, this defendant denies any knowledge or information thereof sufficient to form a belief.

II.

For answer to the allegations of Paragraph II of Count II of plaintiffs' complaint, this defendant admits the same.

III.

For answer to the allegations of Paragraph III of Count II of plaintiffs' complaint, this defendant denies the same.

IV.

For answer to the allegations of Paragraph IV of Count II of plaintiffs' complaint, this defendant admits the same.

V.

For answer to the allegations of Paragraph V of

Count II of plaintiffs' complaint, this defendant admits that on the 23d day of September, 1913, the plaintiff M. A. Hunt was in charge of and driving an automobile on said Twenty-seventh Avenue, but denies each and every other allegation therein contained.

VI.

For answer to the allegations of Paragraph VI of Count II of plaintiffs' complaint, this defendant denies the same.

VII.

For answer to the allegations of Paragraph VII of Count II of plaintiffs' complaint, this defendant denies the [12] same.

VIII.

For answer to the allegations of Paragraph VIII of Count II of plaintiffs' complaint, this defendant denies the same.

IX.

For answer to the allegations of Paragraph IX of Count II of plaintiffs' complaint, this defendant denies the same.

X.

For answer to the allegations of Paragraph X of Count II of plaintiffs' complaint, this defendant denies the same.

XI.

For answer to the allegations of Paragraph XI of Count II of plaintiffs' complaint, this defendant denies the same and particularly denies that plaintiffs, or either of them, have been damaged in the

sum of Five Thousand Dollars (\$5000.00) or in any other sum or at all.

For a further answer and affirmative defense to said Count II of plaintiffs' complaint, this defendant alleges that whatever injuries or damages, if any, the plaintiffs, or either of them, received were caused and contributed to by the careless and negligent acts of the plaintiff M. A. Hunt.

WHEREFORE this defendant prays that this action be dismissed and that it recover its costs and disbursements herein.

JAMES B. HOWE,

A. J. FALKNOR,

Attorneys for Defendant. [13]

State of Washington,

County of King,—ss.

A. L. KEMPSTER, being first duly sworn, on his oath deposes and says: That he is the manager of the Puget Sound Traction, Light & Power Company, a corporation, defendant in the within-entitled action; that he has read the foregoing Answer, knows the contents thereof and believes the same to be true. That he makes this verification because said defendant is a corporation and affiant is its manager.

A. L. KEMPSTER.

Subscribed and sworn to before me this 7th day of April, 1914.

[Seal]

R. G. SHARPE,

Notary Public in and for the State of Washington,
Residing at Seattle.

Copy of within Answer received and service acknowledged this 7th day of April, 1914.

T. F. BEVINGTON,

HAMMOND & HAMMOND,

Attorneys for Plaintiff.

[Indorsed]: Answer. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Apr. 8, 1914. Frank L. Crosby, Clerk. By E. M. L., Deputy. [14]

*In the District Court of the United States for the
Western District of Washington, Northern
Division.*

No. 2700.

M. A. HUNT and MARY A. HUNT, His Wife,
Plaintiffs,

vs.

PUGET SOUND TRACTION, LIGHT & POWER
COMPANY, a Corporation,

Defendant.

Reply.

Come now the plaintiffs in the above-entitled action, by T. F. Bevington and Hammond & Hammond, their attorneys, and for their reply to the answer of the defendant filed herein, say:

I.

That for their reply to the first affirmative defense contained in defendant's answer to Count I of plaintiff's complaint, they deny that whatever damages plaintiffs, or either of them have received, were

caused and contributed to by the careless and negligent acts of the plaintiff, M. A. Hunt.

II.

That for their reply to the second affirmative defense contained in defendant's answer to Count I of Plaintiff's complaint, said plaintiffs say, that they deny each and every allegation contained therein, except as hereinafter stated, and these plaintiffs say, that upon the said 23d day of September, 1913, the said plaintiffs had purchased upon contract, the automobile referred to in plaintiff's complaint, and had paid upon the purchase price of the same, the sum of Four (\$400.00) Hundred Dollars. That upon said date, said plaintiffs were entitled to and were in possession of said automobile and operating the same. That because [15] of the negligent acts of the defendant, referred to in plaintiff's complaint, and the injuries and damages sustained by the said plaintiffs, and the loss of the use of the said automobile, the plaintiffs were prevented from making the next payment due upon said automobile, on the 5th day of October, A. D. 1913, and that subsequently thereto the said plaintiffs were compelled to return said automobile to the Pacific Car Company, the original vendor of the same.

III.

That for their reply to the affirmative defense contained in defendant's answer to Count II of plaintiffs' complaint, said plaintiffs deny that the injuries and damages the plaintiffs, or either of them received, were caused and contributed by the careless and negligent acts of the plaintiff, M. A. Hunt.

WHEREFORE, plaintiffs pray as in their complaint.

T. F. BEVINGTON and
HAMMOND & HAMMOND,
Attorneys for Plaintiffs. [16]

State of Washington,
County of King,—ss.

M. A. Hunt being first duly sworn, on oath, deposes and says: That he is one of the plaintiffs mentioned in the foregoing reply; that he has read the same, knows the contents thereof, and that the same and the statements therein contained are true as he verily believes.

M. A. HUNT.

Subscribed and sworn to before me this 21 day of April, A. D. 1914.

EDWARD VAN TOBLE,
Notary Public in and for the State of Washington,
Residing at Seattle.

Service of the within Reply by delivery of a copy to the undersigned is hereby acknowledged this 22d day of April, 1914.

JAMES B. HOWE,
A. J. FALKNOR,
Attorneys for Defendant.

[Indorsed]: Reply. Filed in the District Court, Western Dist. of Washington, Apr. 24, 1914. Frank L. Crosby, Clerk. By E. M. L. Deputy. [17]

*In the District Court of the United States for the
Western District of Washington.*

No. 2700.

M. A. HUNT and MARY A. HUNT, His Wife,
Plaintiffs,

vs.

PUGET SOUND TRACTION, LIGHT & POWER
COMPANY, a Corporation,
Defendant.

Verdict.

We, the jury in the above-entitled cause, find for
the plaintiffs and assess their damages at the sum
of \$500.00.

J. B. SEAVEY,
Foreman.

[Indorsed]: Verdict. Filed in the U. S. District
Court, Western Dist. of Washington, Sep. 26, 1914.
Frank L. Crosby, Clerk. By S. E. Leitch, Dep-
uty. [18]

*In the United States District Court for the Western
District of Washington, Northern Division.*

No. 2700.

M. A. HUNT and MARY A. HUNT, His Wife,
Plaintiffs,

vs.

PUGET SOUND TRACTION, LIGHT & POWER
COMPANY, a Corporation,
Defendant.

Judgment.

BE IT REMEMBERED, That the above-entitled cause was duly and regularly set for trial to be had upon the 22d day of September, A. D. 1914, and upon the said date was duly and regularly continued until the 23d day of September, A. D. 1914, and upon said 23d day of September, A. D. 1914, was duly and regularly continued until the 24th day of September, A. D. 1914, at which time the said cause came on regularly for trial; plaintiffs appearing in person and by Thomas F. Bevington, Esq., and F. E. Hammond, Esq., their attorneys, and the defendant appearing by A. J. Falknor, its attorney; and a jury having been duly and regularly called and impaneled to try the cause, the said cause proceeded to trial;

WHEREUPON, Counsel for the plaintiffs and the defendant, made their opening statements to the jury, and the plaintiffs proceeded to the introduction of their evidence, and the defendant having introduced its evidence, and after the arguments of counsel to the jury, and after the Court had instructed the jury, and after counsel for and on behalf of plaintiffs and defendant had taken their exceptions to the giving of instructions by the Court, and the refusal of the Court to give certain other instructions, said [19] jury retired, considered the evidence and thereafter on the 26th day of September, A. D. 1914, said jury returned into the court its verdict, finding for and on behalf of the plaintiffs in the sum of Five Hundred (\$500.00) Dollars; and the said verdict having been duly and regularly received

by the Court and filed in the cause, and the plaintiffs having made their motion for a judgment upon said verdict, and the Court being fully advised in the premises;

NOW THEREFORE, It is ordered, adjudged and decreed, that the said plaintiffs, M. A. Hunt and Mary A. Hunt, his wife, have and recover of the said defendant, Puget Sound Traction, Light & Power Company, a corporation, the sum of Five Hundred (\$500.00) Dollars, together with interest and costs of this action, taxed at \$87.48, and that execution issue therefor.

Done in open court this 2d day of November, A. D. 1914.

JEREMIAH NETERER,

Judge.

Copy of within Notice and Judgment received and due service of same acknowledged this 30th day of Oct., 1914.

JAMES B. HOWE,

A. J. FALKNOR,

Attorneys for Def.

[Indorsed]: Notice. Judgment. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Nov. 2, 1914. Frank L. Crosby, Clerk. By E. M. L., Deputy. [20]

*In the District Court of the United States for the
Western District of Washington, Northern
Division.*

No. 2700.

M. A. HUNT and MARY A. HUNT, His Wife,
Plaintiffs,

vs.

PUGET SOUND TRACTION, LIGHT & POWER
COMPANY, a Corporation,

Defendant.

**Stipulation [Extending Time to Serve Bill of
Exceptions, etc.].**

IT IS HEREBY STIPULATED that the defendant shall have up to and including the 26th day of October, 1914, within which to serve upon the plaintiffs a draft or copy of its proposed bill of exceptions in the above action, and that an order may be entered in the above court and cause to that effect.

T. F. BEVINGTON,

F. E. HAMMOND,

Attorneys for Plaintiffs.

JAMES B. HOWE,

A. J. FALKNOR,

Attorneys for Defendant. [21]

*In the District Court of the United States for the
Western District of Washington, Northern
Division.*

No. 2700.

M. A. HUNT and MARY A. HUNT, His Wife,
Plaintiffs,

vs.

PUGET SOUND TRACTION, LIGHT & POWER
COMPANY, a Corporation,

Defendant.

**Order [Extending Time to Serve Bill of Exceptions,
etc.].**

In accordance with the stipulation of the parties hereto, it is hereby ORDERED and ADJUDGED that the defendant's time within which to serve upon the plaintiffs a draft or copy of its proposed bill of exceptions in the above action, be, and the same is, hereby extended, and the defendant is allowed up to and including the 26th day of October, 1914, within which to prepare and serve upon the plaintiffs a draft or copy of its proposed bill of exceptions in the above action.

JEREMIAH NETERER,
Judge.

O.K. T. Bevington.
F. E. Hammond.

[Indorsed]: Stipulation and Order Extending Time Within Which to Serve Proposed Bill of Exceptions. [22]

*In the District Court of the United States for the
Western District of Washington, Northern
Division.*

No. 2700.

M. A. HUNT, et al.,

Plaintiffs,

vs.

PUGET SOUND TRACTION, LIGHT, and
POWER COMPANY, a Corporation,
Defendant.

Defendant's Proposed Bill of Exceptions.

First Exception.

BE IT REMEMBERED, that in the trial of this case on the 24th day of September, 1914, before the Honorable Jeremiah Neterer, both parties appearing by counsel, the jury was duly empaneled and sworn, and at the close of all the evidence the defendant challenged the sufficiency of the evidence to sustain a verdict for the plaintiff, for the reason that the evidence showed that the injuries which the plaintiff received, if any, were caused by his own careless acts and negligence, and asked the Court to instruct the jury to return a verdict for the defendant. Such request and motion of the defendant was denied by the Court, and with the denial thereof the defendant duly excepted and its exception was allowed.

The defendant submits the following stenographic report of the trial herein, consisting of pages 4 to 216, inclusive, which is all of the evidence given and received upon the trial of the action, together with

all exhibits, being Plaintiffs' Exhibits 1, 2, 3, 4, 5, 6, 8 and 9, and Defendant's Exhibits "A," "B," "C," "D," "E" and "F," referred to and received in evidence, as a bill of exceptions in support of this its first exception: [24]

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[Testimony of Albro Gardner, Jr., for Plaintiffs.]

ALBRO GARDNER JR., produced as a witness on behalf of plaintiffs, being first duly sworn, testifies as follows:

Q. (By Mr. HAMMOND) What is your name?

A. Albro Gardner, Jr.

Q. What is your business, Mr. Gardner?

(Testimony of Albro Gardner, Jr.)

A. Civil engineer.

Q. How long have you been engaged in that business? A. Most of the time since 1892.

Q. I wish you would state whether or not at my request you went out to the corner of 27th Avenue and Cherry Street and took some measurements of the ground there? A. I have, yes, sir.

Q. Did you make a diagram of that locality and put upon paper your measurements?

A. I understand that was your other question. I have. Yes, sir.

Q. I wish you would state—I am handing you a diagram marked “Plaintiff’s Exhibit No. 1 for identification,” and ask you what that is?

A. That is a map showing—I will read the title of it, “Map showing location of street improvements and Puget Sound Traction Light & Power Company tracks at 27th and East Cherry Street.

Mr. FALKNOR.—Those measurements are accurate? A. They are.

Mr. HAMMOND.—We offer the map in evidence.

Mr. FALKNOR.—Let me see if there is anything marked on there.

The COURT.—If there is no objection it will be admitted.

(Map received in evidence and marked “Plaintiff’s Exhibit No. 1.”) [27]

Q. I wish you would state, Mr. Gardner, what these rings indicate at various places on the map?

A. The small circles are manholes.

Q. These circles here at the crossing indicate the

(Testimony of Albro Gardner, Jr.)

manholes. That is the drain?

A. Where the surface water from the pavement runs into the sewer.

Q. Here on 27th Avenue, the east side of 27th Avenue, the north side of Cherry Street, is a circle marked "Pole."

A. That is a telegraph pole. Either a telegraph or an electric light pole.

Q. And the hydrant is also marked? A. Yes.

Q. And on the map is marked "pole" at different places. That means telegraph or telephone poles?

A. Yes.

Q. And the distance from the different letters is indicated where? A. On the face of the map.

Q. For instance, "A" to "B," nine feet; from "B" to "C," twelve feet; "C" to "D," 180 feet; "C" to "E," 128 feet, and "C" to "F," 174 feet?

A. Yes, sir.

Q. What is the scale of the map?

A. One inch equals ten feet.

Q. This marked on the southwest corner of 27th Avenue and Cherry Street, "Apartment House?"

A. Yes.

Q. Do you recall—this map does not show the width of the apartment house. Do you remember what that was, or did [28] you measure it?

A. I didn't stop to measure it.

Q. Nor the length of the apartment house?

A. About 92 or 93 feet.

Q. Now here is something marked here, indicating what?

(Testimony of Albro Gardner, Jr.)

A. That is marked in pencil just north of the west end of the apartment house, and indicates a delivery wagon and horse.

Q. That is where I told you the vehicle was standing, that is what that represents? A. Yes.

Q. The lines in the center of Cherry Street indicate the street railway track? A. Yes.

Q. Did you take the measurement from the south track to the curb of Cherry Street?

A. They are all to scale.

Q. What is the distance to the curb on the south side of the street car track? A. Sixteen feet.

Q. What is the width of 27th Avenue?

A. Sixty feet. The paved portion is 25 feet.

Q. That is on the south side of Cherry Street?

A. I may say that the brown, or the dark color, represents the asphalt paving. The red represents the brick paving, which is at the gutter or each side of the four rails of the two tracks.

Q. The white on the south side represents what?

A. The concrete walk, and the white represents the apartment house. [29]

Q. Between the brown and the apartment house is—— A. The parking strip.

Q. Can you give me the width of the parking strip?

A. The parking next to the sidewalk is four feet wide; the concrete walk is six feet; and the inner parking strip two feet, on the south side of Cherry.

Q. Four, six and two? A. Yes, sir.

Q. And what is it on the west side of 27th?

A. That is seven feet and a half; six feet for the

(Testimony of Albro Gardner, Jr.)

concrete walk, and four feet for the inner parking strip.

Q. The point "A" represents what?

A. The spot as pointed out by——

Mr. HAMMOND.—This is merely for the purpose of getting the measurements. Mr. Hunt states that these points are where the accident happened.

Mr. FALKNOR.—Mr. Hunt ought to do that then. You might ask him the measurements from those points, but what those points are I think should be testified to by somebody else.

Mr. HAMMOND.—That is true.

The COURT.—Proceed.

Cross-examination.

Q. (By Mr. FALKNOR.) That I may get this clear, Mr. Gardner, 27th Avenue is paved?

A. Yes.

Q. And the paved portion is 25 feet wide?

A. Yes [30]

Q. And then from the paved sidewalk on the curb line over to the building is how far?

A. Seventeen and one-half feet from the outer edge of the curb.

Q. That is on the east side of the building?

A. Yes.

Q. From the edge of the building to the curb, and then the street is 25 feet?

A. The roadway, yes, sir.

Q. And the same 17½ feet on this side? (Indicating.) A. Yes, sir.

Q. And on the north side of the apartment house,

(Testimony of Albro Gardner, Jr.)

from the apartment house to the curb is 12 feet?

A. Yes.

Q. And from the curb line to the easterly-most rail is 16 feet. A. The southern-most rail.

Q. Which would make from the southerly rail to the house, 28 feet? A. Yes.

Q. Now, from the north edge of the apartment house there is no obstruction on the sidewalk that interferes with the ordinary view across?

A. Just these poles.

Q. Otherwise there is nothing to obstruct one's vision across in this direction?

A. Nothing that is permanent.

Q. Except this pole? A. Yes.

Mr. HAMMOND.—I wish you would indicate on here with a pencil [31] just what these measurements are that you spoke of; between the curb and the sidewalk, the parking strip, on the south side of Cherry Street. (Witness does so.)

A. The red mark is the gutter.

Mr. HAMMOND.—That is all.

Mr. FALKNOR.—That is all.

(Witness excused.) [32]

[Testimony of M. A. Hunt, for Plaintiffs.]

M. A. HUNT, produced as a witness on behalf of the Plaintiffs, being first duly sworn, testifies as follows:

Q. (By Mr. HAMMOND.) State your name?

A. M. A. Hunt.

Mr. HAMMOND.—We are offering in evidence,

(Testimony of M. A. Hunt.)

Your Honor, as Plaintiff's Exhibit No. 2, sections, or parts of Ordinance No. 24,597 of the City of Seattle, with reference to the driving of street cars.

The COURT.—Any objection?

Mr. FALKNOR.—None at all.

Mr. HAMMOND.—Section 15 of that ordinance provides that no driver shall propel or cause to be propelled any street car within the business or settled residential districts at a speed exceeding twelve miles per hour. That is an ordinance of the city of Seattle.

The COURT.—It may be marked.

(Ordinance received in evidence and marked "Plaintiff's Exhibit No. 2.")

Q. You are the plaintiff in this case, Mr. Hunt?

A. Yes.

Q. How old are you? A. Forty-five years old.

Q. Where do you reside?

A. 1330 Eighth Avenue.

Q. Your wife's name is what?

A. Mary A. Hunt.

Q. What is your business, what is your trade?

A. My trade is a barber.

Q. How long have you been engaged in that business? [33] A. Off and on for 28 or 30 years.

Q. Do you recall the accident that happened out at 27th Avenue and Cherry Street on the 23d day of last September, in which the street car and your automobile collided? A. Yes, sir.

Q. I wish you would tell the jury the circumstances under which that accident happened?

(Testimony of M. A. Hunt.)

A. I was going down 27th Avenue from the south and entering in the block on 27th Avenue I proceeded down towards Cherry, East Cherry Street. As I got nearly down to the block I slowed the machine down for the purpose of crossing the street, and as I entered the block, as soon as I could see, I saw a street car coming at a very rapid rate of speed.

Q. Being as you entered the block or the street?

A. Entered the street. And I could not get across in front of the car—the street car was coming so rapidly that it did not seem that I could cross in front of the car, and I could not turn to my right without going out into the car track. The only thing was to turn my wheel to the left, which I did, and I stopped before I got past the left hand curb. I stopped my machine. I was not on the track, but I was near the track, and in turning the car the right hand wheel of the automobile projected farther than any other part of the automobile. The rubber tire of the automobile was struck first—that gave me my first jar—with the front end of the street car—it threw the wheel out of my hands and threw the right hand fender directly in the center of the front door of the street car, and it scraped along until it [34] came to the front box of the rear truck of the street car, which then struck either—I think my frame of the automobile, and pushed us back so that the rest of the street car didn't hit us at all, went on without any scratches on the street car.

Q. Now, I wish you would come here to this map and indicate to the jury where you were in your best

(Testimony of M. A. Hunt.)

judgment when you first saw the street car?

A. I was on a line with the curb at the point "A."

Q. And then where would the front end of your automobile have been? A. Nine feet ahead of it.

Q. And where is that as indicated on this map?

A. "B."

Q. Then when you first saw the street car coming you were seated at the point "A," practically speaking, and the front of your automobile would be at the point "B"? A. Yes, sir.

Q. Where, as near as you can state, was the street car that was coming down toward you from the west on Cherry Street, about where?

A. Well, about 150 feet, or 175 feet.

Q. Can you point about where it was on the map on Cherry Street? "C" to "D" is 180 feet. Where was it between the point "C" and the point "B," as indicated, that you were about the first time you saw the street car, as you recall it?

A. Near the point "B."

Q. And state where your car was when it came to a stop, after you saw the street car? [35]

A. About the point "C."

Q. Where did the street car stop after it struck you?

A. Between the hydrant across the street here, and the telephone pole, was the back end of the car.

Q. The point marked what? A. "E."

Q. And the front of the car would be about where?

A. About the point "F." It was a 46 foot car.

(Testimony of M. A. Hunt.)

Q. Did you afterwards measure the car or look at it? A. I did.

Q. Where was the cover to the boxing of the rear axle picked up that was knocked off of the street car by the impact?

A. I think about this point here. (Indicating.)

Q. That would be almost on a line with the pole?

A. I think a little inside of the line.

Q. On the west side of 27th Avenue, the place marked "pole" on the west side of 27th Avenue, and the south side of Cherry Street, on a line with that point marked "pole," you think, or a little west or east, which?

A. I think it is a little west of that point.

Q. On which side of the south side of the street car tracks—I mean on which side of the south rail of the street car tracks was it picked up?

A. On the right hand side.

Q. I mean on the north or south side?

A. On the south side.

Q. The south side of the south track of the street car? A. Yes, sir.

Q. Who was with you in the car?

A. Mr. Bevington. [36]

Q. Where was he seated? A. At my left.

Q. In the front or rear seat?

A. The front seat.

Q. Was there any obstruction on your left-hand side that would obstruct your view to the westward other than the brick apartment house on the southwest corner of 27th and Cherry?

(Testimony of M. A. Hunt.)

A. There was a covered wagon and team in there, a delivery wagon.

Q. You say it was a covered wagon? A. Yes.

Q. By that you mean that it was high with a cover over it, or something laid over the bottom of the wagon?

A. No, a high cover, a canopy over the driver's seat.

Q. Do you remember about where that was located, as near as you can recall?

A. Some where in this line right in here. (Indicating.) I could not be certain as to the exact point, but it was in this line here.

Q. And state whether or not that obstructed your view of any street car that might be coming?

A. I could not see any car or anything until I got by this line; being seated down lower I could not see the street car until I got by the line of this team.

Q. You were unable, then, to see across, as I understand it, prior to the time you got out here on a line, you think with this curve? (Indicating.)

A. To the point I could see it?

Q. Why could you not see it from right in here? (Indicating.) [37]

A. I could not see it back in this point here on account of this team.

Q. Now, tell the jury how long you had been driving an automobile up to that time?

A. Well, I had driven an automobile quite a little.

Q. What do you mean by quite a little?

A. Enough so that I understood—enough so I

(Testimony of M. A. Hunt.)

could understand the operation of the machine.

Q. How much was that?

A. Well, I had driven—

Q. (Interrupting.) About how many months had you been driving this car, how long had you had it?

A. Why, I think six or seven weeks is all.

Q. Now, had you ever driven—was it a new car?

A. A new car, yes, sir.

Q. Just out of the shop? A. Yes.

Q. Had you ever driven any other car?

A. Yes.

Q. When, and how long before?

A. Six months previous to that.

Q. Do you remember the make of the car?

A. I had driven a Mitchell, and a Winton too.

Q. On this particular day, as you came up 27th Avenue here, what had you been doing as to testing the speed of the car, or demonstrating it for Mr. Bevington's benefit?

A. Back a couple of blocks I was demonstrating how low the machine could be throttled down, to a mile or two miles an hour, and how quickly it would gain speed to twenty miles an hour, and at no time did my speedometer show [38] to exceed twenty-two miles from Yesler Way over to that point. When I entered the block, that block, proceeding down to Cherry Street, I was not running to exceed fifteen miles, when I entered the block.

Q. Well, now, as you came down this way, state whether or not you slowed the car down?

A. I slowed the car down with my foot brake.

(Testimony of M. A. Hunt.)

Q. Now, then, about how fast were you going when you reached the point "A"?

A. I don't think I was running eight miles.

Q. Your intention when you got to the point "A" was to go where, where were you going?

A. I was going to go across the tracks and turn and go down west.

Q. And from the time you saw the car at "A" until you succeeded in bringing it to a stop what was necessary for you to do in order to bring it to a stop, put on your emergency brake?

A. I put on my emergency brake simply because the foot brake would not stop it dead still in that space I had to stop in.

Q. From the time you saw the car until you could stop it about what interval of time would elapse before you could reach down and get your emergency brake, or bring it to a stop?

A. The first thing I had to do after I saw the car—I decided I could not get in front of it—I had to turn with both hands the wheel to the left. That took a little space of time. Then I immediately reached for the emergency brake and closed it down as quickly as I could.

Q. At the time you saw the street car coming at about what [39] rate of speed do you think the car was coming?

A. It looked to me to be coming pretty fast. In looking at the car it widened out to me like this (indicating), showing that it was coming very swift. I judge 30 to 35 miles an hour.

Q. When you saw it coming? A. Yes.

(Testimony of M. A. Hunt.)

Q. It had passed 26th Avenue?

A. It had passed 26th Avenue. It didn't stop at 26th Avenue, I don't think.

Mr. FALKNOR.—If you don't know I move that the answer be stricken.

Q. You don't know anything about that, do you?

A. I don't know. I didn't see it.

Q. After the car had struck you, you say that the wheels were turned around so that the right fender of the car was thrown into the street car?

A. The wheels was turned to the left. The wheels were over to the left as far as they could go, leaving the rubber tire projecting further than any other part of the automobile. I thought I had missed the car. I thought I was far enough away so that the car would not hit me, but the very front end of the street car, where the frame comes around, struck the rubber tire, and threw it into the door, the front door.

(Whereupon the Court takes a recess until 2:00 o'clock, P. M.) [40]

September 24, 1914; 2:00 o'clock, P. M. Continuation of proceedings pursuant to recess. All parties present as at former hearing. Jury polled—all present.

M. A. HUNT, on the witness stand for further direct examination.

Q. (By Mr. HAMMOND.) Mr. Hunt, I would like to have you, in order to fix it definitely, as nearly as you can, have you tell the jury when you were at the point "A," as shown on Plaintiff's Exhibit No. 1, about where the street car was that struck your auto-

(Testimony of M. A. Hunt.)

mobile. You come down and indicate, please?

A. I could just see it by the team.

Q. The team that is indicated here?

A. Yes. I don't know whether the team stood right at that point, but right where the team stood.

Q. You saw it just coming—

Mr. FALKNOR.—(Interrupting.) Don't lead the witness.

A. I saw it coming just by the team.

Q. Now, you don't know—state if you know about where that was, if you can do so, as near as you can?

A. Well, the team was between the back entrance and this entrance. (Indicating.)

Q. This entrance here into the apartment?

A. Yes, and possibly in here somewhere is where I could see the street car.

Q. Somewhere between the point "C" and the point "D"? A. Yes.

Q. Not further back than the point "D"? [41]

A. Not further back than the point "D."

Q. How large a car were you driving?

A. A Hudson six cylinder, 6-4 horse power.

Q. What was the length of it?

A. About 15½ feet.

Q. What was the weight of it?

A. 3980 pounds.

Q. What was the length of the car—what was the distance, rather, between the point where you were sitting and the fender, the front end of the fender, the front fender? A. About nine feet.

Q. About nine feet, you say—have you measured

(Testimony of M. A. Hunt.)

it, do you know what it is?

A. Yes. I have measured it, but they vary a little bit, an inch or two.

Q. The two fenders?

A. Yes, the two different fenders.

Q. It wont be an inch or two off either way?

A. No, about nine feet.

Q. Have you any idea as to the length of the time that elapsed between the time that your car—between the time you saw the street car and the time it struck you, struck your car?

A. Well, to my best judgment, oh, probably four seconds.

Q. That is, from the time you first saw it—

Mr. FALKNOR.—Just a minute, I object to the witness being led.

Q. I will ask you to state whether or not that is from the time you first saw it, or some other time?

A. That is from the time I first saw the street car, about four seconds until it hit me. [42]

Q. And I wish you would state whether or not, prior to the time the street car struck your automobile, you heard the ringing of any bell or gong, or other noise made by the street car?

A. No, I did not.

Q. I wish you would state to the jury the effect upon your automobile that the—I withdraw that question.¹ Tell the jury how your automobile was damaged by this street car running into it.

Mr. FALKNOR.—I object unless it is for the purpose of showing the amount of impact. If it is for

(Testimony of M. A. Hunt.)

the purpose of showing the damage to the car for the purpose of recovery I object to it because under the pleadings he is clearly shown not to be entitled to recover for any damage to the car.

(Question read to the Court.)

The COURT.—What is the purpose, Mr. Hammond?

Mr. HAMMOND.—Well, there are two purposes. One purpose is to show the effect of this street car hitting the automobile. That is, the idea being that if the car was damaged, bent or broken, why we assume that they were evidently coming at a high rate of speed. The other idea is that he is entitled to recover for damages to his automobile.

The COURT.—What have you to say, Mr. Falknor, about the damage to the automobile?

Mr. FALKNOR.—Here is the situation as to the automobile. It is conceded, so far as the pleadings are concerned, that he held the automobile under a conditional bill of sale, and the title did not pass, but remained in the vendor. [43] He didn't pay for the improvements; he didn't pay for any of the repairs. The automobile was taken back. Now, if I might briefly give my idea on this subject, it is this; He paid \$400 on the contract. He did not pay for any of the repairs or any of the improvements. He made none of the subsequent payments. After this accident he never had possession of the car further than to take it to the garage. The vendor took possession of the car and made the improvements. Now, the only damage that he could possibly have

(Testimony of M. A. Hunt.)

sustained, Your Honor, would be the loss of the \$400. He can not sue for that. He is suing for the damage to the car, but the car never was his. He never paid for the damage. It was taken back by the vendor. Now, would Your Honor say that I may have an automobile under a conditional bill of sale, one for which I, for instance, may have paid one dollar, and took it out and it is damaged to the extent of one thousand dollars, the vendor takes it back and pays for the improvements, I surrender my car, would Your Honor say I could recover for damages to the car? I am not out anything.

The COURT.—You could not recover one thousand dollars.

Mr. FALKNOR.—I could not recover. The only thing I could recover, your Honor, would be, frankly, such an amount as would be the difference between what I had paid, \$400, and the use of the car for six weeks. If the use of the car for six weeks was worth \$400, then I am not out anything, am I? Now, they sue in this case, Your Honor, in the complaint for the damages to the car. Then we set up, Your Honor, that they did not own the car, and they admit it. That puts them clearly outside of the [44] question of damages to the car, because certainly a man cannot recover anything he didn't pay. He cannot recover anything he is not obliged to pay. He is not obligated to pay these repairs. He did not pay, even. Can he come into Court and recover? Certainly not. That could not be the law. I said that this might be competent as bearing upon the ex-

(Testimony of M. A. Hunt.)

tent of the impact, but upon the question of damages to the car, he never paid the damages, and is not obligated to pay them, because the car went back to the vendor and was surrendered.

Mr. HAMMOND.—It occurs to me that that is all a question of instruction by the Court to the jury. Certainly counsel would not contend for a moment if I bought an automobile, bought it upon a contract and paid \$400 down, as Mr. Hunt did in this case, and I was using that in a business of any kind, and under the contract in this case he had the right as part of the agreement to use the automobile, and then the automobile gets damaged by the Seattle Electric Company, and I go ahead and pay out—I haven't paid just the \$400, but I go ahead and pay out my contract, would the Seattle Electric Company be heard to say that I could not recover damages to the automobile. It is mine while I have it. I have the right to possession of that car.

Mr. FALKNOR.—I will concede, Your Honor, that if he paid out on the contract, and made these repairs, or became obligated—

The COURT.—I understand you.

Mr. HAMMOND.—Now, it occurs to me that in in this case we are [45] entitled to show the damage to this car. Now, then, if we do not in our evidence prove that we are entitled to recover for the damage we are trying to prove, your Honor will certainly take it away from the jury.

The COURT.—I have the idea of both of you now. I think the objection should be overruled irrespective

(Testimony of M. A. Hunt.)

of what the conclusion may be as to the right of recovery for the damage to the car. Note an exception.

(Exception noted for Defendant.)

(Question repeated to the witness as follows:)

Q. Tell the jury how your automobile was damaged by this street car running into it?

Mr FALKNOR.—I object to that as suggestive and leading, Your Honor. I further object because it is suggestive and leading.

The COURT.—Objection overruled.

Mr. FALKNOR.—Exception.

A. The right wheel.

Q. Which, front or rear?

A. The front right wheel, the tire, steering gear.

Q. Just as you go along; the front right wheel, what was the damage to that?

A. It was broken, had to be replaced.

Q. The wheel was broken and had to be replaced?

A. Yes.

Q. What other part of the car?

A. The tire and the rim.

Q. The rubber tire, you are speaking of now?

A. Yes.

Q. How was that damaged?

A. Torn and broken. [46]

Q. What else? A. The right fender.

Q. How was that damaged?

A. Doubled all up, and broken.

Q. Back?

A. Clear back. Also the right running board.

Q. How was that damaged?

(Testimony of M. A. Hunt.)

A. That was bent up in the center, broken in two.

Q. How else was the car damaged?

A. The steering gear was broken.

Q. In what way? Broken, you say? A. Yes.

Q. Whereabouts?

A. Both sides, both knuckles.

Q. What else was damaged? A. The axle.

Q. How was the axle damaged?

A. It was bent and broken; had to be replaced.

Q. How large is that axle, how big around?

A. I don't know, I could not give the number of inches.

Q. Is it a little thin, round piece of steel, or a big piece of iron, or steel; have you any idea what the axle looks like.

A. I think it is about two and one-half inches thick in the rear axle, and running down to an inch and a half front, possibly. It is nine or ten inches long. I don't know the dimensions of it.

Q. How was that damaged? Bent, you say? Which way?

A. It was sprung under, out of shape.

Q. What other damage was done to the car? [47]

A. The frame, the whole frame that runs clear through the car, that was bent right around, necessitating a new frame. I have a list of the parts that were put in.

Q. An entirely new frame? A. Yes.

Q. You have a list?

A. Of the parts that were put in.

Q. Where is it? A. In my pocket.

(Testimony of M. A. Hunt.)

Q. Look at it and refresh your memory if you need it at all.

Mr. FALKNOR.—Did he make up this list himself, or was it handed to him?

The WITNESS.—The Pacific Car Company did it.

Mr. FALKNOR.—I object to it as hearsay.

Q. What other damage was done to your car?

Mr. FALKNOR.—I object to his reading from that statement unless he knows of his own knowledge.

The COURT.—Yes.

Q. Do you know whether that list is correct?

A. I know it is correct as to the things put in there.

Q. How do you know it is correct? Have you examined it and compared it with the car so that you know what was broken on the car?

A. Yes. They are not all on here either.

Q. Tell what you know, anyhow, about what was damaged. What other damage was done to the car of any consequence. I am not speaking of the little——

A. (Interrupting) The right headlight broken.

Q. What else of any consequence?

A. I have enumerated the larger things now. [48]

Q. I wish you would tell the jury what the value of the repairing of the car was?

Mr. FALKNOR.—I object to that as immaterial under the pleadings in this case. This man has no interest in the repairs. He neither paid for them nor obligated himself to pay for them. He didn't

(Testimony of M. A. Hunt.)

own the car. The car was taken back by the vendor, who made the repairs and paid for them. Certainly a man can not recover something that he neither paid for nor is obligated to pay for.

The COURT.—He may answer the question.

Mr. FALKNOR.—Exception.

(Exception noted for defendant.)

(Question repeated to the witness.)

Q. How much money?

A. The absolute parts charged to me by the Pacific Car Company that they put in was \$321.90.

Q. 321.90?

A. I have their bill here as charged.

Q. Does that include all the damage to the car that you have spoken of, the three hundred and ninety some odd dollars?

A. There was some things they didn't pull in, a couple of tires.

Q. What was the value of those tires?

A. I suppose about \$48 apiece.

Q. What was that other amount you said?

A. 321.90.

Q. What particular business were you engaged in, using this car in at the time that it was damaged?

A. I had it on the rent.

Q. You mean you had it for hire upon the streets of Seattle? [49] A. I had it for hire.

Q. Where were you standing with the car?

A. In the street on Third Avenue, between Pike and Union.

Q. Do you know what the earning capacity of the

(Testimony of M. A. Hunt.)

car was during this time?

A. I think it was about 37 days, seven hundred and some dollars. I don't remember the amount.

Q. What was that?

A. Seven hundred and some dollars. I don't remember the exact amount.

Q. How many days? A. Thirty-seven days.

Q. What do you mean by that?

A. The amount of money taken in on the car.

Q. Well, you figured that as being—does that include your own time on the car—how do you figure that, how do you arrive at that figure?

A. I had a man working on the car nights, and I worked on it part of the day myself, and the amount taken in was close to eight hundred dollars. I cannot give you the exact number of days, 32 or 37 days, I don't know which.

Q. How many days was it, Mr. Hunt, that the car was being repaired?

Mr. FALKNOR.—I object to that as immaterial. The car was surrendered to the vendor and no further payments made.

The COURT.—Objection sustained beyond the time when it was surrendered.

Mr. HAMMOND.—We will prove, your Honor, the length of time that under the contract he had the use of that car.

The COURT.—Then limit your question to that.
[50]

Mr. HAMMOND.—I want to prove by him now,

(Testimony of M. A. Hunt.)

your Honor, the number of days before he could have taken the car back.

The COURT.—The objection is sustained to the question as propounded.

Q. How many days, Mr. Hunt, was it before the car was ready to be used upon the rental business, after the injury?

A. I don't know exactly the number of days just now. I cannot remember, but about a month, I think.

Q. Not less than a month?

A. I don't know. I can't remember.

Q. When was it the car was taken back from you by the Pacific Car people, who had sold you the car?

A. The 5th day of February.

Q. The 5th day of February, 1914? A. 1914.

Q. Was there any payment of any kind due upon the car when the accident happened?

A. There was not.

Q. When was the next payment due upon the car?

A. The 5th day of October.

Q. 1913? A. 1913.

Q. How much per day was the value of the use of that car upon the renting? A. About ten dollars.

Q. About ten dollars per day? A. Yes, sir.

Q. That includes your own services?

A. No, sir.

Q. What were your services worth? [51]

A. They run about \$15 a day.

Q. In addition to driving the car yourself you say you had a man hired who ran the car at night?

(Testimony of M. A. Hunt.)

A. At night.

Q. How much had you paid upon the car at the time of the accident? A. Four hundred dollars.

Q. Why didn't you make the other payments upon the car when they became due?

Mr. FALKNOR.—I object as immaterial. Your Honor, why he didn't.

The COURT.—Objection sustained.

Q. Was the bill for the damage to the car presented to you by the Pacific Car Company?

A. Yes, sir.

Q. Now, I wish you would tell the jury what effect the impact of the street-car with your automobile had upon you physically. Where were you injured?

A. I was injured across the right side and abdomen, and the back, and back of the neck.

Q. Were you in bed any length of time?

A. Well, I was in bed off and on for about a month.

Q. At the time of the accident did you go home in a street car, or how did you go home?

A. I went up to the Pacific Car Company with the manager and one of the men first with the car.

Q. With your car? A. Yes.

Q. When did you first notice the effects of this accident, that day, or the next day, or the next day, or when? A. That evening. [52]

Q. What did you notice particularly serious that evening?

A. I felt some pain and some shaking up, the breath knocked out of me and things like that at the time, but I didn't think I was hurt very badly. Of

(Testimony of M. A. Hunt.)

course I was excited at the time, but Mr. Crosby, that is the demonstrator of the Pacific Car Company, took me over on the 27th Avenue where I left my wife in the morning, and I stayed there until I suppose possibly eight o'clock, and I got to feeling worse and worse, and finally went home. I don't know what time, half past eight or nine, I don't remember what time it was. We left where my wife was about eight or half past eight and went home, and I went to bed right away.

Q. That night?

A. Yes. My wife wanted me to call a doctor at that time, but I said no, I would be all right, I thought.

Q. Did you subsequently have a doctor called?

A. I don't know what time she called the doctor. I am sure I could not tell you that.

Q. Was it that night, or you don't know?

A. I don't know.

Q. Were you delirious during any of the time?

A. Well, part of the time for five or six days I can remember some of the things that happened, and some I cannot.

Q. How many days were you in bed, do you remember?

A. I was in bed most of the time, I was in bed all of the time for five or six days.

Q. Continuously after that night when you went to bed you were in bed? A. Yes. [53]

Q. Did you go down to the Pacific Car Company the next day? A. I did not.

(Testimony of M. A. Hunt.)

Q. Were you out of the house, as you remember, up to the first five days?

A. No, sir, I was not out of the flat.

Q. Who was the doctor that was waiting upon you? A. Dr. Warren Richardson.

Q. You are by profession or trade, I understand, a barber? A. Yes.

Q. Did you, after this accident, go back to work at your trade at any time, and if so about when and what did you do?

A. I tried to work about the first of March some time, maybe a little later than the first of March, I worked part of the time at my trade.

Q. What do you mean by part of the time?

A. Five or six hours a day, three hours in the forenoon and three hours in the afternoon.

Q. What would be whole time?

A. A full ten hours would be whole time.

Q. During the time you were working did you notice any effects, did you have any headaches or nervousness or any troubles of that kind? If so state what they were.

A. At times I got so nervous I would have to call somebody else to finish the man, and go and sit down. At times I have been so nervous that in trying to do the work the razor would fall out of my hands onto the floor.

Q. Prior to this time had you ever had any illness of any kind, prior to the accident; if so, tell the jury.

A. In what length of time? [54]

Q. Oh, a year, or two years, or three years.

(Testimony of M. A. Hunt.)

A. No, not to amount to anything.

Q. Were you in good health on the day of the accident? A. Excellent health.

Q. And since then were there any other symptoms or effects; if so I wish you would tell the jury what they are.

A. When I even travel down the street I get exhausted. To do any little thing, it exhausts me.

Q. Now even?

A. Even yet, and any mental work or calculation—it is pretty hard for me to calculate without getting muddled. I have a depressed sort of feeling. The top of my head seems like something was heavy on top of my head; when I get tired, especially.

Q. During the time you were ill did you have any nurses, or who waited on you?

A. My wife waited on me.

Q. Now, I wish you would state whether there was any injury to your ribs at all.

A. They hurt me down on my right side. The doctor bandaged them up. As to how big an injury, I could not tell.

Q. When did he bandage them up, that night?

A. I am sure I don't know whether it was that night or the next morning, or when it was.

Q. Now, the injury to your back, I wish you would tell the jury how long that lasted, and how it felt; was it painful or just a mere ordinary ache or something; tell the jury how it felt.

A. It differed, sometimes a hard day, and other times just a dull ache. That is, after the side got

(Testimony of M. A. Hunt.)

better it didn't [55] hurt me so badly, but when the side was still lame it hurt a great deal more than in the back.

Q. Now, you say you think it was in March that you went to work on half time, or part time?

A. Yes.

Q. Prior to this time they had taken your automobile away from you, the company had taken it back because you were not able to make the repairs?

A. Yes.

Q. How long did you continue to work on this half time or part time?

A. Oh, I think about five or six weeks.

Q. Well, then, what did you do, did you go to work whole time or quit, or what did you do?

A. Oh, I got to feeling much worse again, nervous, I could not work. I quit and went over to Vashon Island on a ranch and stayed there for six weeks or so.

Q. Have you been working since you came back?

A. I have been working part time since I came back.

Q. And you are now working whole time or part time?

A. I am working part time. Of course not this week.

Q. Since the injury, if I understand you rightly—I wish you would state, rather, whether since the injury you have been able to work whole time or at all.

A. I have not.

Q. About how much time since the injury have you worked altogether?

(Testimony of M. A. Hunt.)

A. Oh, I don't know. Ten or twelve weeks part time.

Q. What is your earning capacity, Mr. Hunt, as a barber when you are working at full time? [56]

A. Well, I have never made, working at full time, less than \$125, and from that to \$140 a month.

Q. I wish you would tell the jury a little more fully about the extent of your headaches; were those headaches once a week or once a day or once a month, or tell them how often you have them.

A. Every morning when I would awake I was not any more rested than when I went to bed. In fact, I didn't sleep very much. I always had the headache in the morning, and do yet, for that matter.

Q. Have you stated whether or not you worried about your condition?

Mr. FALKNOR.—Oh, I object to that as immaterial.

The COURT.—Oh, yes, I think whether he worried or not is immaterial.

Q. What have you expended or become obligated to expend for services of a physician in connection with this injury? A. Oh, I suppose about \$75.

Q. Have you expended any money for medicines or other— A. About ten dollars.

Q. What do you estimate, Mr. Hunt, is the—how much did you weigh physically before this accident?

A. 177½ pounds.

Q. What have you weighed since?

A. Oh, I have weighed 152. I weigh 162 now.

Q. Have you been out to the place where this acci-

(Testimony of M. A. Hunt.)

dent happened recently? A. Yes, sir.

Q. I wish you would tell the jury about how thickly populated that is in that community. [57]

A. Well, along 27th Avenue most of the lots are filled with houses on the left-hand side. There is not so many on the other side.

Q. There is a school how far from there?

A. There is a school, I think, a couple of blocks from there.

Q. What is the size of that apartment house, how many stories? A. Three stories.

Q. You have been in there, have you; do you know how many apartments there are? A. I do not.

Q. You say this is a rather thickly populated part of the city? A. Yes.

Q. At the time the car was delivered to you you were to keep the car in repair, were you?

Mr. FALKNOR.—I object. The contract speaks for itself.

The COURT.—Yes.

Q. I hand you a piece of paper here and ask you whether or not that is the agreement signed by the Pacific Car Company with you? A. It is a copy.

Q. It is a duplicate copy?

A. This is a duplicate copy, yes, sir.

Mr. HAMMOND.—I would like to have it marked "Plaintiff's Exhibit No. 3," I think it is, for identification.

The COURT.—Let the clerk mark it.

(Document marked for identification as "Plaintiffs' Exhibit No. 3.")

Q. That is the contract under which you held the

(Testimony of M. A. Hunt.)

car, is it not? A. Yes, sir. [58]

Mr. HAMMOND.—We offer it in evidence.

Mr. FALKNOR.—No objection.

The COURT.—It will be admitted.

(Document received in evidence and marked
“Plaintiff’s Exhibit No. 3.”)

Q. Under that contract you were to have the use of the car during the time—at all times while it was in your possession, were you not? A. Yes.

Q. And were to keep it in repair?

A. Yes, sir.

Q. There was no payment due, as I understood you to say at the time of this accident?

A. No, there was no payment due at the time of the accident.

Q. And they did not take it away from you until the 5th day of the next February? A. Yes.

Q. I wish you would state what that is, Mr. Hunt.
(Hands document to witness.)

A. This is a form of note.

Q. That is the note? A. Yes.

Mr. HAMMOND.—It is marked “Plaintiffs’ Exhibit No. 4 for identification.” We offer it in evidence.

Mr. FALKNOR.—It is wholly immaterial, your Honor.

The COURT.—It may be admitted.

(Exception noted for defendant.)

(Document received in evidence and marked
“Plaintiffs’ Exhibit No. 4.”)

Mr. HAMMOND.—That is all. [59]

(Testimony of M. A. Hunt.)

Cross-examination.

Q. (By Mr. FALKNOR.) Mr. Hunt, I understand that you have pursued your calling of barber for something like 28 or 30 years?

A. Yes, about that time.

Q. That has been your life work?

A. Well, I haven't done it all the time.

Q. I know, but that has been your general life work?

A. That has been my trade when I was not doing something else.

Q. I understood you to tell the jury that you had pursued it for 28 or 30 years? A. Off and on.

Q. Did you say anything about off and on when they asked you how long you had been a barber, on direct examination?

A. I should have to answer that I had been a barber that long.

Q. You said you had been a barber for 28 or 30 years. You didn't say anything about being a barber off and on. Well, now, this was a Hudson car?

A. Yes, sir.

Q. You got it from the Pacific Car Company on about the 5th day of August, didn't you?

A. About the 5th day of August.

Q. Last year?

A. The contract was made. I didn't receive the car quite so quick as that.

Q. You had never driven a Hudson before that?

A. No. Not any distance. [60]

Q. Now, about a week previous to this accident

(Testimony of M. A. Hunt.)

you had another accident where you ran into a wagon with a woman in it along the road down here at Puyallup, and upset the wagon, didn't you; about a week previous to this accident?

A. No, I did not.

Q. Didn't you have an accident in Puyallup where you upset a wagon with a woman?

Mr. HAMMOND.—I object—

Mr. FALKNOR.—Bearing upon the question of the competency of the driver, your Honor.

The COURT.—He may answer.

Q. Didn't you run into a wagon?

A. Not a week before.

Q. How many days before? A. Well—

Q. Eight or nine days, or ten days; I said about a week before? A. More than that.

Q. Well, how many days more than that?

A. I would have to refer to my memory.

Q. Well, it was about ten days or a week before this other accident? A. More than that.

Q. Just how many days, then; it could not have been very many days more than that?

A. I think it was about the 29th of August.

Q. On about the 29th of August. Very well; you remember the date? A. I am not sure.

Q. On this date in question you had Mr. Bevington with you, [61] didn't you? A. On what day?

Q. On this day in question, the day you had your accident out here with the street car, you had Mr. Bevington with you?

A. He was in the wreck with me.

(Testimony of M. A. Hunt.)

Q. And about two blocks before the accident you were showing him how slow you could run?

A. More than that.

Q. Didn't you tell the jury about two blocks before the accident you were showing him how slow you could run?

A. Possibly about two or three blocks.

Q. Then you were showing him what you could do with your car? A. I was demonstrating it.

Q. And after you showed him how slow you could run, then you showed him how fast you could run?

A. I showed him how fast I could run first.

Q. After you showed him how slow, didn't you speed her up again and show how fast you could run?

A. No.

Q. How fast did you show him you could run on the streets of the city of Seattle?

A. About twenty miles.

Q. Didn't you show him you could run faster than twenty miles on the paved streets?

A. I was not trying to show him the rate of speed I could run; it was how quick the car could pick up from nothing to a certain speed.

Q. When you come within a block of East Cherry Street it is paved, isn't it? [62] A. Yes.

Q. How fast did you take you car down the block?

A. Entering into the block?

Q. Yes. A. About fifteen miles.

Q. About fifteen miles. Did you see anybody in the street? A. In Cherry Street?

Q. Yes, and in 27th Avenue?

(Testimony of M. A. Hunt.)

A. I saw people in Cherry Street, automobiles running back and forth.

Q. Did you see anybody on 27th Avenue in that block, when you came down through at fifteen miles an hour?

A. I think there was people along the block. I would not be certain.

Q. Did you see anybody in the street.

A. I don't remember.

Q. You don't remember. Now, as a matter of fact, did you see the street sweeper there in the street, or did you bring your car down so fast that you could not see him?

A. No, it was not a matter that I could not see; I don't think I saw any—

Q. As a matter of fact, you brought your car down so fast that you could not see him; you brought your car down that block at not less than 25 miles an hour, isn't that true? A. No, that is not a fact.

Q. How quickly can you stop your car going at eight miles an hour? A. How quickly?

Q. Yes. Is it up grade or down grade on 27th Avenue? [63] A. Down grade.

Q. About level, isn't it? A. No, down grade.

Q. How much down grade?

A. Well, I could not quite state.

Q. When you turn in on East Cherry Street is it up or down grade, or level?

A. Well, about level.

Q. How quick could you stop that car at eight miles an hour on the level? Eight miles an hour is

(Testimony of M. A. Hunt.)

awful slow when you look at the speedometer.

A. How quick can I stop it?

Q. How quick can you stop that car? Your emergency brake and foot brake were all right, your clutch was all right?

A. After you get the brake—

Q. (Interrupting.) Your brakes were all right?

A. Yes.

Q. How quickly could you stop that car going at eight miles an hour?

A. I suppose I could stop it in twelve feet.

Q. Four feet? A. Twelve feet.

Q. Would it skid any when you would stop in twelve feet? A. No.

Q. Will you tell the jury, then, if there was skid marks showing that the car skidded fifteen or twenty feet, where it skidded fifteen or twenty feet—

Mr. HAMMOND.—If the Court please, there is no evidence that it skidded.

Mr. FALKNOR.—I am assuming that there would be evidence. [64]

Q. If there was evidence showing that your car skidded fifteen or twenty feet, wouldn't that indicate that you were going at a very much greater rate of speed than eight miles an hour?

A. There are no skids there.

Q. If there were skid marks there after the accident showing that your car had skidded fifteen or twenty feet, would you still tell the jury that you were not going more than eight miles an hour?

A. I don't claim that I was not running more than

(Testimony of M. A. Hunt.)

eight miles back up the street.

Q. I am saying when you made the turn into East Cherry Street, when you say you were stopping, if your car skidded fifteen or twenty feet, do you mean to tell the jury you were only going eight miles an hour?

A. You couldn't possibly skid twelve or fifteen feet.

Q. If your car skidded fifteen feet at that place that would indicate what speed you would be going?

A. Fifteen feet?

Q. Yes. Twenty-five miles an hour, wouldn't it?

A. Well, on a dry track you couldn't skid a car fifteen feet going twenty miles an hour.

Q. Well, it would indicate that you were going at a high rate of speed if your car skidded that far, wouldn't it? A. Yes, if it skidded.

Q. If it skidded, yes. Now, when did you look for the street car when you came out on East Cherry Street, when did you first look for a car?

A. As quick as I could see.

Q. As quick as you could see; then as soon as you could [65] look down over the sidewalk you could look for the street-car. As soon as you got in that position (indicating on Plaintiff's Exhibit No. 1)—did you come up the center of the street, or did you observe the ordinance and keep on the right hand side of 27th Avenue? A. I was right in the center.

Q. Then you were over here on the right-hand side? A. Not clear over to the curb.

Q. Well, like that? (Indicating.)

(Testimony of M. A. Hunt.)

A. My left wheel was just off the center.

Q. Then as quick as your vision would come down here you looked for the street-car, that is your idea?

A. There was no obstruction.

Q. There was no obstruction between the corner of the house and the street-car track that obstructed your vision, was there?

A. No. Only the telegraph pole.

Q. A telephone pole didn't conceal a street-car, did it? A. No.

Q. Then the moment that your vision got by the corner of this building you began to look for a street-car? No particularly a street-car; anything.

Q. And then your vision kept on following that around, turned as your car proceeded, like that, is that right? You kept on looking for street-cars, did you, or vehicles? A. Oh, I looked both ways.

Q. Why didn't you see that street-car?

A. I couldn't see it any quicker than I did.

Q. You couldn't see it any quicker than you did; why?

A. My view was obstructed. Being seated in the automobile, I [66] could not see the street-car until it came by the team or came into view by the team.

Q. Do you mean to tell the jury that this one team down here, standing next to the curb, obstructed your view of that great big street-car?

A. It obstructed my view of the street-car until I could see by it.

Q. Was the team and the wagon so big you could

(Testimony of M. A. Hunt.)

not see the street-car above it or below it or behind it, or in front of it?

A. I could not see it until I could get a vision by the team.

Q. You say that this one team standing down here obstructed your view of the whole big street-car?

A. It was not only the team, it was a high, covered wagon.

Q. Whatever it was it was a delivery wagon, wasn't it? This delivery wagon obstructed your view of that street-car? A. It did.

Q. You tell the jury that you could not see that street-car by that wagon? You come down here and tell me where this—make a point on this map here where this street-car was when you say you were at “A,” will you?

A. I could not give the exact point.

Q. Your counsel had you guess, now guess a little for me. Do you say you did not see the street-car until you were at “A,” and the front of the car was at “B,” and the distance between you and “B” is the distance between the seat and the front end of the car is nine feet? Isn't that rather long?

A. It is about right. [67]

Q. Is it nine feet from where you sit to the front end? A. Just about.

Q. Did you measure it? A. I did.

Q. For the purpose of this suit, or are you guessing? A. I measured it.

Q. When did you measure it?

A. I cannot tell you exactly.

(Testimony of M. A. Hunt.)

Q. Very well. Now, when you were at "A" you tell me where this street-car was. You said in your direct examination it was back 180 feet; is that right? A. 150 to 175 feet.

Q. Now, then, tell me where it was?

A. I should say it was somewhere in here.

Q. 150 or 175 feet, that is right, that is correct, isn't it? A. I cannot tell you.

Q. It was your testimony on direct examination that when you were at "A" and the front of the car at "B," you saw the street-car down here 150 to 175 feet away; is that right?

A. I saw the street-car somewhere between this corner—

Q. 150 or 175 feet away?

A. Possibly it might have been 175 feet, about.

Q. Now, the front of your car—you didn't say "about" to-day when you were on direct examination, did you? You said it was 180 feet, didn't you?

A. 150 to 180 feet.

Q. Now, the front of your car was at "B" at that instant, wasn't it? A. When I saw the street-car?

Q. Yes; and it is nine feet from "A" to "B," and "A" was [68] about on a line with this curb, and if it is fifteen feet from the track to the curb, the front of your car was six feet from the track, wasn't it, at the time when you saw the street-car 180 or 150, or 175 feet away; is that right?

A. I think it was about eight feet.

Q. Didn't you say that it was nine feet from "A" to "B"? A. Yes.

(Testimony of M. A. Hunt.)

Q. And that is nine feet, about, on a line with this curb? A. Back of the line.

Q. Very little back of the line. Six or eight feet, we will say. The front of your car is six or eight feet from the track, and the street-car is 175 or 180 feet away? A. That is right.

Q. 150 to 180 feet?

A. I said I would not be sure.

Q. What will you be sure about? Didn't you tell this jury on direct examination that that car was about 180 feet away? A. No.

Q. How far was it away, that is what I want to get at? A. About 150.

Q. Let us see if we can have it clear now. The front of your car is from six to eight feet from the easterly rail, of the nearest track. Your car is in motion going at least eight miles, and the street-car is 150 to 180 feet away; is that right?

A. No, I don't think it was that far away.

Q. You are getting closer now. Didn't you tell me just a minute ago that it was 150 to 180 feet, that it was nearer [69] than 180 and further than 150; isn't that right? Now, at that time, with your car going at least eight miles an hour, and the street-car 150 or 180 feet away, and the front of your car six or eight feet from the track, do you mean to tell the jury, that you, an experienced automobile driver, got frightened at the car and turned to the left with that car that far away; do you tell the jury that is what you did? A. I was not frightened at the car.

Q. Why didn't you drive on across?

(Testimony of M. A. Hunt.)

A. I couldn't get across without the automobile getting square in front. I had slowed my car down. I didn't have power to get it over.

Q. The facts are these, Mr. Hunt, are they not; you first saw the car when the front end of it was about ten feet west of 27th Avenue, and at that instant you were about fifteen feet south of East Cherry Street; you first saw the street-car when the front end of it was not further than ten feet west of this street, and you were about fifteen feet south of East Cherry Street, and that is the situation that existed between you and the street-car when you first observed it? A. That is not correct.

Q. And didn't you then observe that the street-car being so near that you could neither get across or stop or turn to the right, and you attempted to turn to the left and hit the car back about five or six feet back of the front end?

A. No, sir, that is not a fact.

Q. Which is the farthest portion of your car, the fender or [70] the wheels?

A. The wheel was at that time.

Q. Now, when your car is standing straight isn't your fender the farthest point?

A. They are about even.

Q. Were there any marks on that street-car, on the front end of it, or any place, until you got back five or six feet? A. Yes.

Q. Any marks on the car? A. Yes.

Q. Do you think you can see then on a picture?

(Testimony of M. A. Hunt.)

A. I think I could see them on the street-car itself.

Mr. FALKNOR.—I wish to have this photograph marked for identification as “Defendant’s Exhibit “A.”

(Photograph marked as above.)

Mr. HAMMOND.—We will object to interrogating this witness regarding this picture until there is some proof that this picture was taken of that car, and that it was in the same condition when the picture was taken that it was after the accident.

The COURT.—The witness will know.

Mr. FALKNOR.—We will show that it was taken the next day.

Q. You allege it was Car No. 361. That is Car No. 361, isn’t it? (Showing photograph.) A. Yes.

Q. That looks like the car in question? A. Yes.

Q. Do you see any marks on that car in front of the door, where your fender hit it?

A. Right there on this part of your door, right there is the [71] first mark made.

Q. Do you see a mark on that picture. Is there any mark on that picture?

A. You can see the mark across the door now.

Q. I didn’t ask across the door. Is there any mark on the front door? A. Yes.

Q. In that picture?

A. Yes, right there it is. (Indicating with pointer.)

Q. Show it to the jury—oh, you marked on it with that stick a moment ago, you rubbed that stick on it.

(Testimony of M. A. Hunt.)

Your Honor, I am going to ask—he rubbed that stick on there a minute ago—I am going to ask that Car No. 361 be brought here for this jury to see it. He takes a stick and rubs it there and says. “There is a mark.”

Mr. BEVINGTON.—We move to strike the remarks of counsel as prejudicial.

The COURT.—Proceed. The jury will disregard them.

Mr. HAMMOND.—I join with respect to seeing the car.

Mr. FALKNOR.—I can not submit this photograph to the jury because it is not in evidence.

Mr. HAMMOND.—Who took it?

Mr. FALKNOR.—I can not submit this to the jury because it is not admitted in evidence.

The COURT.—Proceed with your examination.

Mr. FALKNOR.—Your Honor, I am advised that Car No. 361 was in a head on collision—Your Honor will remember the Pinkman case, the man from Wisconsin, this car was in a collision in that case, that man who had sued the Wisconsin Central Railway—What I was getting at is that I [72] want to be frank with the jury. This car has been in a collision with another car, and whether or not we can differentiate one scar from the other might be a difficult proposition at this time.

The COURT.—Proceed.

Mr. FALKNOR.—I am perfectly willing for the jury to see the car.

Q. Now, you say you stopped your car?

(Testimony of M. A. Hunt)

A. Yes.

Q. What did you stop it for; why didn't you keep on turning it around?

A. I put on the emergency brake and it stopped. That is what I was trying to do, stop, and I got on the brake.

Q. You were turning to the left?

A. I turned in to the left before I put on my emergency brake to stop, and I couldn't allow my car to go any further towards the track without turning. If I did I would have been on the track.

Q. How far was the street-car away when you stopped your automobile?

A. It was very close to me when I got it stopped.

Q. Why didn't you get your car in motion? What did you stop it for? Your car was going around to the left, why didn't you keep on moving it, what did you stop it for?

A. I stopped it supposedly that it was outside of the car track.

Q. Then you did stop it purposely, didn't you.

A. I stopped it purposely.

Q. You could have sent it on further, couldn't you?

A. No, I didn't think I could, under the circumstances. After [73] I put on the emergency brake I had no power left.

Q. But you didn't need to stop right at the place you did, did you?

A. Well, I don't understand that question.

(Testimony of M. A. Hunt.)

Q. You didn't need to stop the car right where you did stop it, did you?

A. I didn't need to stop the car at all.

Q. That is the point, you didn't need to stop the car at all.

A. I could go on and let them hit me in the side.

Q. Your car was going to the left, you didn't need to stop at all. It only hit your right wheel. You could have kept your car right on to the left, couldn't you?

A. No, I couldn't keep my car going; if I had I would have—

Q. Before you stopped it, I am talking about. You stopped there purposely, because you thought you were far enough away. Why didn't you keep your car going?

A. The emergency brake stopped it.

Q. You put the emergency brake on, and stopped it. You could have kept your emergency brake off and run it?

A. I could not go any further. I would have ran into the telegraph pole if I ran the other way.

Q. You stopped the car because you thought you were far enough away to allow the car to go by, didn't you? A. That was not the reason I stopped.

Q. Well, you stopped your car at a place where you thought you were far enough away to let the car go by, is that it?

A. I was not certain whether I was or not.

Q. Didn't you tell this jury two or three times that when you stopped your car you thought you were far

(Testimony of M. A. Hunt.)

enough away? [74] A. I did think so.

Q. And you told this jury that you didn't have to stop it there, you could have kept going right on, isn't that right?

A. I had to stop there if I put on my emergency brake.

Q. You didn't have to put on your emergency brake, did you, you could have put on your foot brake?

A. I had on my foot brake, and it didn't stop the car solid enough.

Q. Let us get this clear. As a matter of fact, your car never stopped at all until it ran into the street-car, did it?

A. Yes, it did. It stopped dead still, and I was trying my best to work it into the reverse when they hit me.

Q. Why were you working it into the reverse when they hit you, if you thought that you were far enough away to let the street-car go by?

A. I was not sure of my position.

Q. You didn't need to stop it where you did stop it, did you?

A. I stopped it the best I could stop it.

Q. Now, your car was in motion, and everything was all right. Why didn't you, when you came here, why didn't you swing your car off to the left, after you saw the street-car, why did you run out there and stop it?

A. I couldn't swing it in a shorter place than that.

Q. It was going slow?

(Testimony of M. A. Hunt.)

A. You couldn't turn in as short a place as that.

Q. Fifteen feet, and you could not turn your car in there, and stop close to the curb?

A. After I saw it, I had no fifteen feet to turn.

Q. The car was down here 180 feet when you saw car, wasn't it? [75]. Do you tell the jury that you didn't have time to whirl your car to the left and avoid a collision if the stree-car was that far away?

A. I only had time to do what I did.

Q. Just stop it where the street-car would come, is that the idea? Did you or did you not have to stop it there, that is what I want to get at?

A. Under the circumstances, I had to stop it there.

Q. You had to stop it there? A. Yes.

Q. Why did you have to stop it there?

A. Because I had put on my emergency brake and had no power.

Q. You didn't have to put on your emergency brake? A. Yes, I did; I wanted to stop.

Q. Why didn't you, instead of stopping, keep on going to the left?

A. I just told you I couldn't go up there to the left on the same angle or my wheels would run onto the telegraph pole.

Q. The telephone-pole away over here about fifteen feet from you; you tell the jury you would run into the telephone-pole?

A. That is not where the telephone-pole is.

Q. That is where it is on your engineer's map.

A. The next one, I am talking about. You would

(Testimony of M. A. Hunt.)

run into that telephone-pole if you kept the same angle.

Q. Which telephone-pole?

A. Probably run into the sidewalk.

Q. Show us which telephone-pole you would run into if you had to run out there and stop? [76]

A. The telephone-pole or sidewalk?

Q. What telephone-pole are you talking about that you would run into?

A. The sidewalk there, and the team was in there.

Q. The team was away down here, wasn't it?

A. Yes.

Q. You didn't have to run out there and stop, because of this team, did you?

A. Well, I couldn't run between the car and the team.

Q. There was plenty of room between the team and 27th Avenue without running into the team.

A. Yes, but I didn't have much time to consider how much room I had there.

Q. You were an experienced driver? A. Yes.

Q. So you ran it out there and stopped where the street-car would hit it?

A. I turned my wheels as far to the left as I could, but I couldn't make the turn after I saw the car.

Q. When you first saw that street-car, it was then ten or fifteen—the front end of it was ten or fifteen feet from 27th Avenue, and you were down here about fifteen feet from East Cherry Street, going 25 miles an hour; you were going so fast you couldn't make the turn, and you skidded into the front end

(Testimony of M. A. Hunt.)

of the car, isn't that all there is to it?

A. No, that is not a fact.

Q. Why didn't you turn to the right, as the ordinance requires you to, turn to the right here, when you were here, why didn't you turn down that way? [77]

I would have went on the track the same as the other way.

Q. Didn't you know the ordinance of the city required you to turn to the right?

A. Not when you are going to the left.

Q. When you go to the left, it requires you to go around the intersection of the street?

A. Yes, sir; past the center.

Q. Not to turn to the left?

A. I have that right in the case of an accident.

Q. Does the ordinance give you that right in case of an accident?

A. Yes, sir. They give me any right in the world to avoid an accident.

Q. The ordinance says you should turn to the right, and if you turn to the left go around the intersection. Couldn't you turn to the right when you saw the car 180 feet away? A. I could not.

Q. And your car only going eight miles an hour?

A. I hadn't space enough without turning into the track.

Q. There is fifteen feet from this curb to the rail, and you tell the jury you could not swing the car to the right in fifteen feet?

A. The end of my car was in the street.

(Testimony of M. A. Hunt.)

Q. Couldn't the end of your car be swung around here, and—

A. (Interrupting.)—Not a Hudson automobile cannot, not a six cylinder cannot be.

Q. You examined into this machine carefully?

A. Yes.

Q. And you thought they were about the best going? A. They are a good machine. [78]

Q. Do you mean to tell the jury you couldn't take that six-cylinder Hudson, going eight miles an hour, and swing it right off sharp against that curb?

A. No. Not when the front of your car is nine or ten feet from the curb.

Q. You mean going 25 miles an hour?

A. Or five miles an hour, or a mile an hour, you couldn't do it.

Q. Now, you paid \$400 on this machine, didn't you? A. Yes.

Q. You had it how many days?

A. I cannot tell you, exactly.

Q. About 38 or 40 days?

A. I cannot tell you, exactly.

Q. Give me some idea. You know.

A. Possibly six weeks.

Q. That is about 40 days, isn't it? You say the net rental of that car per day was ten dollars. That is what it was worth outside of the labor or material, or gas used on the car, ten dollars per day.

A. Yes.

Q. So then you got \$400 of rent out of that car, didn't you?

(Testimony of M. A. Hunt.)

A. Well, I don't know that it would be worth that much.

Q. It is not worth that much to you, is that the idea? You swore in your complaint it was worth ten dollars a day as rental. A. Yes.

Q. And you only paid \$400? A. Yes.

Q. You only paid for the rental of the car for the time you [79] had it, didn't you?

A. Just about.

Q. Just about; did you pay for these repairs?

Mr. BEVINGTON.—I object to that as immaterial.

Mr. FALKNOR.—It leads up to the point that he is not obligated.

The COURT.—He may answer.

A. They are charged to me. I haven't paid them.

Q. They are charged to you since you surrendered the car? A. I don't know about that.

Q. You know that they don't hold you for them?

A. No, I don't know it.

Q. You don't intend to pay it?

A. I certainly intend to pay them.

Q. You haven't paid them? A. No.

Q. More than a year has gone by?

A. I haven't had money to pay it. That is why.

Q. That is the only reason you haven't paid it?

A. The manager of the car company never heard me say, nor I never said I didn't—

Q. (Interrupting.) When did they last ask you for the payment of these repairs?

A. I don't know.

(Testimony of M. A. Hunt.)

Q. So long ago you don't remember?

A. I don't know if they ever asked me.

Q. You know they never asked you for the payment of those repairs. Did you ever have this car after this accident in your possession, to use it?

A. No.

Q. They took it back, didn't they? The Pacific Car Company [80] was the company from whom you purchased the car, wasn't it? A. Yes.

Q. They took the car into their garage after this accident?

A. I telephoned to them to come and get the car.

Q. You went with the car to their garage, and left it in their garage, didn't you? A. Yes.

Q. The people who sold you this car had the repairs put on it, didn't they? A. Yes, by my order.

Q. And then they sold the car to somebody else because you didn't make your payments?

A. They sold the car after they took the car back.

Q. You never had it after the 23d day of September, did you?

A. No, I didn't have possession of the car.

Q. Yes, they took it back on the day of the accident, didn't they? A. No, they did not.

Q. Well, you never had it after that?

A. No, I didn't have it.

Q. Who did have it after that?

A. Why, it was getting repaired.

Q. Who was making the repairs, the Pacific Car Company? A. The Pacific Car Company.

Q. So they had possession of it from the time of the

(Testimony of M. A. Hunt.)

accident, all the time afterwards?

Mr. HAMMOND.—If the Court please, the contract itself, which has been admitted in evidence, shows that they could not take it back until the next payment was due, which was a month or more afterwards. [81]

Mr. FALKNOR.—They did take it back.

The COURT.—Proceed.

Q. They took it back on the day of the accident, and you never had it afterwards?

A. They took it back on the 5th day of February; they took it back subject to the contract.

Q. They surrendered this note to you on this date, that is the date they gave you back the note?

A. Yes, and a statement with it.

Q. You called the thing off. They handed back your contract and your note, and that was the final wiping out of the account between you?

A. No, I didn't hand back anything.

Q. They handed you back the note? A. Yes.

Q. And you took it? A. Yes.

Q. And since that time nobody has ever asked you for one cent on these repairs?

A. I don't think I have seen any of them.

Q. So, as a matter of fact, you have not been out—you are not out a thing on the car. If it is worth ten dollars a day rental you only paid about the fair rental of the car while you had it? That is true?

A. My time in there was worth something.

Q. You are carrying on your trade now?

A. I am working a little.

(Testimony of M. A. Hunt.)

Q. You are working as an extra-man?

A. I am not hardly working as an extra-man.

Q. In these shops they have what they call extra-men, haven't they? [82]

A. I am only working—

Q. (Interrupting.) Answer my question. In these shops they have what they call extra-men, haven't they? A. Yes, they do have extra-men.

Q. And you are working as an extra-man?

A. No.

Q. That is what you have been generally doing since this accident, working in different shops as an extra-man? A. I am hardly working extra now.

Q. They don't work full time?

A. They have to work six hours. I don't work that long.

Q. They don't work the full ten hours? A. No.

Q. As a matter of fact—let us be fair—in these shops where you have been working you have been going around as an extra-man, and you haven't worked full time because extra-men don't work full time? A. Extra-men don't work full time.

Q. Haven't you been working in the capacity of an extra-man?

A. I did work as an extra-man, but not now.

Q. Where are you working now?

A. On Pike Street.

Q. Whose shop?

A. A man by the name of Sadler.

Q. Then you are working as an extra-man?

A. No, because an extra-man gets guaranteed a dollar and a half a day. I don't.

(Testimony of M. A. Hunt.)

Q. You are working now as a helper, helping out?

A. Yes. [83]

Q. You are not expected to work full time?

A. No.

Q. Are there any scars on you anywhere as the result of this accident? A. No.

Q. Were there ever any scars? A. No.

Q. There never were any scars where the skin was broken? A. A little bit of a place.

Q. Where was that little bit of a place?

A. On the elbow.

Q. Now, after the accident you got out of the car, and you told the people there you were not hurt?

A. I didn't think I was hurt much.

Q. You helped to bring the car in?

A. Yes, I did.

Q. You went to the Pacific Car Company with your car? A. I went up there.

Q. You told them you were not hurt?

A. I told them I didn't think I was hurt much.

Q. Don't you think if you had been hurt much that by that time you would have begun to feel it?

A. I felt jammed up.

Q. Wasn't there any place where the skin was broken except the elbow? A. That is all.

Q. You were perfectly conscious out there?

A. Yes.

Q. Your breath was not knocked out so you could not tell people?

A. No, but I couldn't catch it for a little bit afterwards. [84]

(Testimony of M. A. Hunt.)

Q. Did you have a talk with Mr. Rupli, either that day or the next day, the assistant claim agent, in regard to this car, where he asked you if anyone in the car was injured, and you said, "No, fortunately neither of us was hurt"? A. With who?

Q. With Mr. Rupli; did you have a talk with Mr. Rupli that day?

Q. What day are you talking about?

Q. The day of the accident, either that day or the next day, my recollection is not clear.

A. A personal talk.

Q. Mr. Rupli, the assistant claim agent, talked to you over the telephone, wherein he asked about whether anybody in the automobile was hurt, and you said, "Fortunately, neither of use were hurt."

Mr. HAMMOND.—You say a conversation over the telephone.

Mr. FALKNOR.—Yes, with Mr. Rupli, assistant claim agent.

Mr. HAMMOND.—How did he know.

Q. Did you have a talk with anybody in the Claim Department with reference to the damages on this car? A. I don't think so.

Q. Did you have any talk with anyone over the 'phone?

A. I don't think I talked with anyone over the 'phone, unless it was Mr. Atkinson, for him to come and get the car. I think Mr. Bevington called up the Seattle Electric Company. I don't remember now.

Q. Didn't you both, you and Mr. Bevington that day, talk to the Claim Department over the 'phone,

(Testimony of M. A. Hunt.)

and both of you state "Fortunately, neither of us were hurt"? [85]

A. I don't think I talked to him.

Q. Well, you didn't go to bed that night until about eight or nine o'clock, the customary time, did you?

A. I didn't go to bed until I got home.

Q. You were up until nine o'clock, were you not?

A. No, I laid down all the time I was there, over to the lady's where my wife was. I was laying down at the time after I got there.

Q. What time did you get there

A. I think it was half past two, or three o'clock.

Q. This accident occurred in the morning?

A. Eleven o'clock, about.

Q. You say you didn't hear any bell on the street-car? A. No, sir, I did not.

Q. At no time? A. At no time?

Q. Yes.

A. I didn't understand that question.

Q. At no time after you got out where you saw the street-car, or immediately before, did you hear any bell on the street-car?

A. Yes, sir; at about the time it hit me I heard the bell.

Q. Oh, you did. A. They rang it just then.

Q. Don't you know that that bell had been ringing quite a distance back as it came by the apartment house, one of those rotary gongs that you could easily hear? A. I didn't hear it until they hit me.

Q. You knew that street-cars operated up and down those streets? [86]

(Testimony of M. A. Hunt.)

A. Yes.

Q. If you couldn't see a street-car behind this one little wagon, why didn't you take a precaution to see that there was a street-car coming before you drove out and stopped?

A. I saw the street-car before I drove out there and stopped.

Q. You saw it before you drove out there and stopped? A. Yes.

Q. And yet you tell the jury you drove out and stopped and thought you were far enough away to let the street-car go by?

A. As far away as I could get. I couldn't turn my car any further.

Q. You got pretty much excited, put on your brake and stopped the car?

A. No, I was not excited. I was more excited after it was over than I was at the time. I was not excited then.

Mr. FALKNOR.—That is all.

(Whereupon the Court takes a short recess.)

Mr. FALKNOR.—I want to ask Mr. Hunt another question.

Q. You had your wind-shield up at the time?

A. Yes, sir, and the top too.

Q. The wind-shield was not broken?

A. No, sir.

Q. The wind-shield was between you and the street-car? A. Yes.

Q. No part of the street-car hit you? A. No.

Mr. FALKNOR.—That is all. [87]

(Testimony of M. A. Hunt.)

Redirect Examination.

Q. (By Mr. Hammond.) I will ask you to state whether or not after you would get the first glimpse, or you would first see the street-car, whether or not it would take any time, the car would be rolling, and it would take any time before you could put on your brakes?

Mr. FALKNOR.—I object to that as a matter of argument?

The COURT.—He may answer.

(Exception noted for defendant.)

A. It would take some time, yes, sir.

Q. After you saw the car, before you put the brakes on, state whether or not the car was continually rolling? A. It was.

Q. And you say it was at "A" when you first saw the car, and by the time you could get your brakes on, get it stopped, it had rolled down to "C"?

Mr. FALKNOR.—I object as suggestive and leading.

The COURT.—He may answer.

(Exception noted for defendant.)

Q. Is that what I understood?

A. When I was at "A" I saw the car. By the time I could get my brakes on and get stopped it stopped at "C."

Q. This happened at eleven o'clock in the morning, and it was a bright, sunshiny day?

A. Twenty minutes to eleven?

Q. The streets were dry? A. Yes, sir.

Q. Counsel asked you why you did not turn to the

(Testimony of M. A. Hunt.)

left more, or turn to the right. State whether or not you did turn [88] your steering gear to the left as soon as you saw the car? A. I did.

Q. State in which direction your car was headed when you first saw the street car? Was your automobile headed straight across, or were you making a turn this way, (indicating) or any turn that way?

A. A trifle to the left, I was making a turn.

Q. You were going down this way to go across here? (Indicating.) A. Yes.

Q. So that when you first saw the street-car your automobile was practically straight ahead?

A. Yes.

Q. And you turned it to the left and started to stop it?

A. I thought I could make the turn in there without meeting the car.

Q. Turn in here? (Indicating.)

A. The reason I stopped was simply because I would hit the street-car at the same time the street-car hit me if I didn't stop. I could not get in there.

Q. About how many feet is it from "D" to this track here, do you remember?

A. About eight feet, I should judge.

Q. And your wheels were a little to the left.

A. Turned a trifle to the left, and I threw them clear over as far as I could.

Q. If you had thrown it again to the right where would it have taken you?

A. Right out across the tracks.

Q. State whether or not as you came down here

(Testimony of M. A. Hunt.)

you ever had [89] any intention of turning in here at all? A. I did not.

Q. Nor in here? (Indicating.)

A. I did not, either place.

Q. And you made no attempt to turn until you saw the car? A. No, sir, I did not.

Mr. FALKNOR.—Don't lead the witness. You are leading all the time. I object to your leading.

Mr. HAMMOND.—That is all

Re-cross Examination.

Q. (By Mr. Falknor.) You had your brakes on already when you saw the street-car?

A. I had the foot brake on.

Q. Yes, you had your foot on your foot brake, and was pressing down on it?

A. Yes, sir, I was. I had it under control all the time.

Q. And as I understand it your car was practically straight ahead at the time you saw the street-car?

A. Practically; turned a little bit to the left.

Q. You didn't have any right to turn to the left until you got across to the other side of the street?

A. Yes, in the center of the street I had the right.

Q. Isn't it true that your car was practically straight? A. Practically straight.

Q. You could have turned to the right as well as to the left?

A. Yes, I could have turned to the right.

Q. Instead of turning to the right you turned to the left, right into the car? [90]

A. I didn't turn into the car.

(Testimony of M. A. Hunt.)

Q. If you had turned to the right you could have speeded up and run ahead?

A. No, I didn't have time.

Q. Well, your car would catch speed instantly when you put your foot on the gas. You had your foot on the gas valve at the time, and all you had to do was turn to the right, put your foot on the gas and speed? A. Yes.

Q. You could have beat the car to the next block if you wanted to? A. No.

Q. What speed could you run that car?

A. What speed could I run that car?

Q. Yes.

A. Oh, I could run the car up, I suppose,—I never tried how fast I could run—probably about sixty miles.

Q. All you had to do was to press down on the gas valve? A. Yes, but it takes some time.

Q. When you are going at least eight miles an hour she picks up the rest awful quick. If you had turned that car to the right, and had not lost your head, you could have run ahead of that street-car, couldn't you? A. No, I couldn't get across.

Q. You could have turned to the right?

A. I couldn't turn without running on the track. I was only eight feet from the track.

Mr. FALKNOR.—That is all.

(Witness excused.) [91]

[Testimony of C. L. Malvurn, for Plaintiffs.]

C. L. MALVURN.—Produced as a witness on behalf of plaintiffs, being first duly sworn, testifies as follows:

Q. (By Mr. HAMMOND.) State your name?

A. C. L. Malvurn

Q. What is your business? A. Contractor.

Q. Where is your place of business?

A. 525 21st Avenue.

Q. That is on the corner of 21st Avenue and East Jefferson Street? A. 21st and East James.

Q. That is about seven or eight blocks from 27th Avenue and Cherry Street? A. Yes.

Q. Do you remember being on Cherry Street, about 27th Avenue, on the 23d day of September, 1913? A. Yes, sir.

Q. Do you remember an accident occurring there, a street-car running into an automobile or otherwise? A. Yes, sir.

Q. Did you see Mr. Hunt there at that time?

A. I did.

Q. Did you see the accident? A. I did.

Q. I wish you would state to the jury as near as you can remember the circumstances connected with that accident, and if you need to indicate anything here if you will just step forward and take this pointer and indicate it.

A. I was driving down Cherry Street, going west, and the [92] first thing I saw of Mr. Hunt he was coming down here, (indicating) and the street-car was coming down East Cherry.

(Testimony of C. L. Malvurn.)

Mr. FALKNOR.—I object to the question as suggestive and leading.

The COURT.—He may answer.

(Exception noted for defendant.)

(Question repeated to witness.)

A. I didn't see Mr. Hunt bring his car to a stop.

Q. You don't know whether Mr. Hunt's car was stopped or not?

A. No. The only thing I can say is that I thought that there had not been any accident, because the car was between Mr. Hunt and me.

Q. Was there any period of time between the time when you saw Mr. Hunt at about the point "C" here before the street-car got down between you and the automobile? A. No, none whatever.

Q. Almost— A. Instantaneous.

Q. Almost instantaneously they got there?

A. They both got to that point at the same time.

Q. Practically the same time?

A. Practically the same time.

Q. Is this a thickly settled part of the town?

A. No. There is an apartment house, and there are no houses along here at all. (Indicating.) There is a school down here, and on 27th Avenue there are two or three houses, and there are no other houses until—

Q. There are a lot of houses down here? (Indicating.) [95]

A. Yes, on 27th Avenue, but there are no houses here and here. (Indicating.)

Q. No houses back of the apartment house, and no

(Testimony of C. L. Malvurn.)

houses along this street? (Indicating.) A. No.

Q. But here and here and here, and here is a school over here?

A. The school is down this way, about 25th or 24th.

Q. Now, let me ask you whether or not after this accident happened you stopped your automobile?

A. Yes, I stopped my automobile, oh, probably, I should judge, at about directly across from the entrance to the apartment-house.

Q. Did you at that time notice whether or not there was a team of horses with a covered wagon along here anywhere? A. There was.

Q. About where was that team of horses standing?

A. It was standing between the entrance to the apartment-house and the alley.

Q. That is, between the middle of the apartment-house and the west end of it? A. Yes.

Q. Somewhere in there? (Indicating.)

A. Yes.

Q. Was it a low wagon or a high, covered wagon?

A. It was a covered wagon.

Q. About where, Mr. Malvurn, did the street-cars stop after the accident?

A. Well, the street-car stopped the other side of—let's see, I would have to look at the map.

Q. Come down here again and indicate. [96]

A. The street-car stopped—there is a telephone pole and a hydrant, and the rear end of the car was about here. (Indicating.)

Q. And the head end was—

A. About here. (Indicating.)

(Testimony of C. L. Malvurn.)

Q. When you say the rear end of the car stood here you mean at the point "E" as indicated on Plaintiff's Exhibit No. 1? A. Yes.

Q. And the front end at the point "F"?

A. And the front end at the point "F."

Q. State whether or not you saw anyone, the conductor or the motorman on that car, come back and pick up any part of the street-car.

A. The cover of the box was picked up in here. (Indicating.)

Q. In here means a little north of 27th Avenue?

A. It is about even with 27th Avenue on the north side.

Q. And on the south side of Cherry Street?

A. Yes.

Q. Do you know what boxing that was, whether it was the rear axle or the front axle, or what it was?

A. I am sure it was the boxing off the rear axle. It was off the rear end of the car.

Q. Did you see anything else near the intersection of 27th Avenue and East Cherry Street at this time?

A. There was a gentleman, I don't know who he was.

Q. Where was he?

A. He was in here some place. (Indicating.) I remember seeing some party.

Q. You don't know who he was?

A. I didn't know him, and wouldn't know him again if I saw him. [97] I took this all in at a glance. I remember seeing somebody.

Mr. HAMMOND.—That is all.

(Testimony of C. L. Malvern.)

Cross-examination.

Q. (By Mr. FALKNOR.) You were going west on East Cherry? A. Yes.

Q. Was anybody with you? A. No.

Q. How far up East Cherry Street were you when you first observed the plaintiff?

A. Well, I practically saw Mr. Hunt and the car at the same time.

Q. How far?

A. I was probably in here. (Indicating.)

Q. Will you mark an "X" there? (Witness does so.) About what speed were you going?

A. I was probably going about ten miles an hour.

Q. You got down, and at the time of the accident you were about opposite.

A. I was about—I was probably in here at the time of the accident.

Q. You make a "V" where you were. (Witness does so.) That is, you drove from "X" to "V" from the time you observed them to the time of the accident? A. Yes.

Q. Now, as compared with your speed was he going slower or faster?

A. When I saw him first he was going about twenty miles an hour. [98]

Q. Going about twice as fast as you were?

A. Going about twice as fast as I was.

Q. Anyway he was some little distance down on 27th Avenue?

A. He was on the other side—probably twenty feet back of this apartment house.

(Testimony of C. L. Malvern.)

Q. When you first observed him?

A. In that neighborhood. I could not say.

Q. About how wide is that apartment house?

A. The apartment house is about 60 feet wide.

Q. And he was about 80 feet on 27th Avenue when you first saw him? A. Yes.

Q. And you observed him about the same time you saw the street-car? The street-car was at what place when you observed it?

A. It was in here some place. (Indicating.)

Q. About "B"? A. About "B."

Q. He had 80 feet to come on 27th Avenue while the street-car came on Cherry Street, and they both arrived there at the same time? A. Yes.

Q. And about the time he was at "A" the street-car would be about in there? (Indicating.)

A. About the time—as I judge, Mr. Hunt really saw the street-car when he was about in here, (indicating) and the car, as you say, was in here.

Q. There could have been nothing to prevent him seeing the street-car when he got by the apartment?

A. Not when he got by, except the team here.

[99]

Q. Well, when he got by the car was already by the team? A. I could not say that.

Q. You would think so, wouldn't you?

A. Repeat the question.

Q. When he got so he could see the street-car on Cherry Street the street-car was already by the team? A. No, I don't think it was.

Q. They both approached this intersection at

(Testimony of C. L. Malvurn.)

about the same time?

A. I know, but the car was going twice as fast.

Q. I didn't ask you that. But they were approaching the same point at the same time?

A. Yes.

Q. And he could see the street-car about the time that he got by the apartment house?

A. Yes, he could see the car there about the time he got where he could see beyond the apartment.

Q. The moment the seat in the automobile got by the apartment house he should have seen the street-car?

A. He should have seen the street-car.

Q. He never stopped his car that you noticed?

A. No, I didn't see him stop the car.

Q. You were over at "V"? A. Yes.

Q. And at no time did you see him stop?

A. Not to a dead standstill.

Q. He was still moving?

A. He was still moving the last I saw him.

Q. Now, Mr. Malvurn, you didn't get off and look particularly at the rear of the car and notice just exactly where it [100] stopped?

A. Yes, I did. I got off and went back to where the conductor and all of them were.

Q. I know, but they all kept back, you went to the accident? A. No, the car was up here.

Q. As a matter of fact, Mr. Malvurn, didn't the rear of that car stop about even with the east side of 27th Avenue?

A. No, sir, the car stopped right up here, sir. (Indicating.)

(Testimony of C. L. Malvurn.)

Q. If people working on the street and seeing the accident, and who observed it particularly, you would not insist you were right?

A. I certainly would.

Q. That the car went way up here?

A. That the car went up to this point here.

Q. Way up there? A. Yes.

Q. Do you know Mr. Jones of the Pacific Motor Company? A. No.

Q. Did you ever speak to him about the accident?

A. No.

Q. Now, you were not paying any attention to this street-car until you first observed it along about "D," were you?

A. I noticed the car was coming mighty fast.

Q. Now, do you mean to tell the jury that that car didn't stop on the far side of 26th Avenue for passengers to get off and on?

A. Yes, I mean to say they didn't stop.

Q. Yet you hadn't any particular reason to be observing the car?

A. The only reason I know they didn't stop was because if [101] they had stopped they could not have the speed.

Q. Then you are reasoning. If they did stop here then you are wrong on your speed; then they could not have gotten up any thirty miles?

A. They were going thirty miles.

Q. You insist they were going thirty miles an hour, therefore you tell the jury they did not stop at the other street. That is all.

(Testimony of C. L. Malvern.)

Mr. HAMMOND.—Go ahead.

The WITNESS.—I saw the car before it came to 26th Avenue. I saw the car west of 26th Avenue.

Redirect Examination.

Q. (By Mr. HAMMOND.) Did you see it go on by? A. I saw it coming beyond 26th Avenue.

Q. You saw it coming beyond 26th Avenue?

A. I saw the car west of 26th Avenue.

Q. How do you know it didn't stop?

A. Because it didn't. I didn't see it stop.

Q. If it had stopped you would have seen it?

A. I would have seen it. I drive that road every day, and the car was coming a whole lot faster than they usually come up Cherry.

Q. When you stated to counsel that if Mr. Hunt had come out here from 27th to Cherry he could have seen the car, that is merely a matter of opinion of your's, you don't know what he could see?

A. No, I don't know what Mr. Hunt could have seen or what he did see. [102]

Q. You don't know whether that wagon obstructed his view or not, do you?

Mr. FALKNOR.—I object to that as suggestive and leading.

The COURT.—Objection sustained. The jury has the testimony of the witness.

Q. Did you observe whether or not that car skidded? A. The automobile skidded?

Q. Yes. A. No, it did not.

Q. It did not skid? A. It did not skid.

Q. What did it do after the brakes took hold; did

(Testimony of C. L. Malvern.)

you go back and look at it, or did you examine it or do anything? A. At the time?

Q. Yes.

A. Just as soon as everything happened I knew how far back he set his brakes because there were tire marks. I noticed that.

Q. The tire marks are not skid marks?

A. They were not until practically three or four feet before—that is, back of where the rear end of the car stood. They were not skid marks, they were just places where the tire would take hold on the pavement and pull off live rubber.

Q. By skidding you mean the whole car pushing around, the brakes set and the car pushing of its own weight? A. Yes.

Q. There were no such marks at this place, the car did not skid? A. The car did not skid, no, sir.

[103]

Recross-examination.

Q. (By Mr. FALKNOR.) Did the wheels slide?

A. Why, they might have slid six inches.

Q. When the emergency brake and the foot brake were on were not both wheels in the rear locked?

A. Yes.

Q. Then they were not going around? A. No.

Q. Then they were sliding on the pavement?

A. They were.

Q. How far did they slide?

A. Probably six or eight inches.

Q. Didn't they slide fifteen feet?

A. No, sir, they did not.

(Testimony of C. L. Malvurn.)

Q. (By Mr. HAMMOND.) Was there any time prior to just before the street-car arrived at where the automobile was that the emergency brakes were on at all?

A. Well, I couldn't really say that. As I say, I didn't see the accident proper and when the emergency brakes were applied. The way I have it figured out the street-car was between me and Mr. Hunt.

Q. You are sure then, as I understand you to say, that when Mr. Hunt came into Cherry Street he was not exceeding eight miles an hour?

A. Very little, if any.

Q. (By Mr. FALKNOR.) And he didn't put on the emergency brake until he got by the car?

A. Until he got by which car?

Q. The street-car—I mean by your vision, that is what you [104] tell the jury?

A. I don't know anything about when Mr. Hunt put the emergency on.

Q. Didn't you say a while ago that he didn't put the emergency on until the street-car got between you and him?

A. I say I didn't see him.

Q. You don't know if he had it on?

A. I don't know anything about it. The only thing—all I know is the tire marks were on the pavement.

Q. Showing that the wheels slid?

A. The wheels slid about six or eight inches. Those were the last deep marks on the pavement.

Q. (By Mr. HAMMOND.) Do you remember

(Testimony of C. L. Malvurn.)

whether or not these wheel marks were on a curve, whether the car was on a curve, or whether it was straight ahead? A. The car was on a curve.

Q. And you saw these marks after the marks were made? A. At these marks and back a ways.

Q. (By Mr. FALKNOR.) Did this street-car stop at 25th Avenue? A. I could not say.

Q. You could see it coming, couldn't you?

A. I could.

Q. Did it stop at 24th Avenue?

A. Yes, it stopped there I know, because they have to.

Q. You know they have to stop at 24th Avenue, but did you see it stop there? A. I didn't see it.

Q. You were looking that way?

A. I would naturally look ahead.

Q. And yet you can't tell whether it stopped at the school [105] sign or not? A. No.

Q. And yet you were looking down that way?

A. Certainly.

Mr. FALKNOR.—That is all.

Mr. HAMMOND.—That is all.

(Witness excused.) [106]

[Testimony of Allen Smith, for Plaintiffs.]

ALLEN SMITH, produced as a witness on behalf of plaintiffs, being first duly sworn, testifies as follows:

Q. (By Mr. HAMMOND.) State your name.

A. Allen Smith.

Q. What is your business?

A. Well, sir, I follow the soliciting of newspapers.

(Testimony of Allen Smith.)

Q. Were you a solicitor for the newspaper on the 23d of last September? A. Yes, sir.

Q. What paper? A. The "P-I."

Q. At about eleven o'clock on that day were you near the intersection of 27th and Cherry?

A. Yes, sir.

Q. About eleven o'clock in the morning?

A. I was.

Q. Did you see the accident that occurred there when the automobile ran into the street-car, or the street-car ran into the automobile? A. I did.

Q. Where were you standing—if you will come down here and indicate, Mr. Smith.

A. Right there. (Indicating on Exhibit "A.")

Q. You were standing on the north—

Mr. FALKNOR.—Make some mark, mark an "S" there.

Q. You were standing on the northwest corner of 27th and Cherry, on the north side of the street?

A. Yes.

Q. Did you see Mr. Hunt come down 27th in his automobile? [107] A. I did.

Q. Did you see a street-car coming west, or going east on Cherry Street? A. I did.

Q. Where was Mr. Hunt and the automobile when you first observed them?

A. Well, just about betwixt and between, about halfway of the block. Here is the block there, right about there.

Q. About half way?

A. About half way between half of the block and

(Testimony of C. L. Malvern.)

whether or not these wheel marks were on a curve, whether the car was on a curve, or whether it was straight ahead? A. The car was on a curve.

Q. And you saw these marks after the marks were made? A. At these marks and back a ways.

Q. (By Mr. FALKNOR.) Did this street-car stop at 25th Avenue? A. I could not say.

Q. You could see it coming, couldn't you?

A. I could.

Q. Did it stop at 24th Avenue?

A. Yes, it stopped there I know, because they have to.

Q. You know they have to stop at 24th Avenue, but did you see it stop there? A. I didn't see it.

Q. You were looking that way?

A. I would naturally look ahead.

Q. And yet you can't tell whether it stopped at the school [105] sign or not? A. No.

Q. And yet you were looking down that way?

A. Certainly.

Mr. FALKNOR.—That is all.

Mr. HAMMOND.—That is all.

(Witness excused.) [106]

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A. Yes, sir.

Q. About eleven o'clock in the morning?

A. I was.

Q. Did you see the accident that occurred there when the automobile ran into the street-car, or the street-car ran into the automobile? A. I did.

Q. Where were you standing—if you will come down here and indicate, Mr. Smith.

A. Right there. (Indicating on Exhibit "A.")

Q. You were standing on the north—

Mr. FALKNOR.—Make some mark, mark an "S" there.

Q. You were standing on the northwest corner of 27th and Cherry, on the north side of the street?

A. Yes.

Q. Did you see Mr. Hunt come down 27th in his automobile? [107] A. I did.

Q. Did you see a street-car coming west, or going east on Cherry Street? A. I did.

Q. Where was Mr. Hunt and the automobile when you first observed them?

A. Well, just about betwixt and between, about halfway of the block. Here is the block there, right about there.

Q. About half way?

A. About half way between half of the block and

(Testimony of Allen Smith.)

the end of the block when I saw him.

Q. About two-thirds of the block south of Cherry Street? A. Just about, yes.

Q. Did you observe the rate of speed that he was going at, whether he was going fast or slow there?

A. I did. I judge he was going about between fifteen and twenty miles an hour.

Q. Did you observe him after that; did the car slow down, or go faster, or what took place after that, so far as the action of the automobile is concerned?

A. As he got along down in here he checked his car, and was running very slow; I suppose about the average would be about something like eight miles an hour, to the best of my ability.

Q. Now, what experience have you had in driving automobiles or noticing the speed of anything that would cause you to put that estimate on the speed?

A. I have a friend that used to own one, and I was in it all the time, very near.

Q. When was that? [108]

A. About three years ago.

Q. Were you in the car very often, about how often?

A. All the way from three to four times a week, and then sometimes more.

Q. For what length of time?

A. Well, for nearly a year.

Q. You think that the automobile was going into Cherry Street about eight miles an hour?

A. After it reached within about thirty feet of Cherry Street.

(Testimony of Allen Smith.)

Q. Now, where was the street-car when you first observed it?

A. The street-car, when I first observed it, was about the center of 26th Avenue on Cherry Street, going east.

Q. Did the street-car stop at 26th Avenue?

A. It did not.

Mr. FALKNOR.—You didn't observe it until it was by the stop.

Q. Was the street-car moving rapidly when you first saw it?

A. It was moving rapidly. When I looked it was about the center of 26th Avenue on Cherry Street coming east.

Q. It came on down here at a rapid or a slow rate of speed, which?

A. It came with a very rapid rate of speed.

Q. At about what rate of speed would you think it was coming when it reached the intersection of Cherry and 27th?

A. To look at the two of them, it looked like the street-car speed was very near twice the speed of the auto, say from the distance that the auto had to come and the distance the street-car had to come.

Q. Now, where was the street-car about when you first observed it—I don't mean when you first observed it, but at the time that Mr. Hunt came into Cherry Street [109] about to point "A," tell me about where the street-car was?

A. Well, sir, the street-car when he got down to the point "A" was here. (Indicating). That should be

(Testimony of Allen Smith.)

about maybe ten or fifteen feet east.

Q. The point "A"? A. Yes.

Q. That is about sixteen feet or fifteen feet from the rail, south rail, I think it is.

A. Well, when Mr. Hunt was right in, you might say just about there, the street-car was right in along here some place. I would not say positive just where, but it was running along there.

Q. Along by the apartment-house?

A. Along by the apartment-house.

Q. I wish you would state whether or not there was a team of horses and a wagon in between the rear end of the apartment-house and 27th Avenue, on Cherry Street.

A. They were standing in just this side of the entrance, between these two entrances, because I came out when the gentleman came in. I was making a canvas upon the ladies of the apartment.

Q. You had been in the apartment-house?

A. I had been in the apartment-house.

Q. When you came out the wagon was standing right at the entrance there, where you came out?

A. No, I came out at this entrance up here. (Indicating.) I have figured it out I came out this entrance, and the wagon was standing back in here some place near the big entrance. It was standing somewhere between those two.

Q. Did you observe where the street-car stopped after the [110] accident? A. Yes, I did.

Q. Whereabouts?

A. The street-car stopped just between where a

(Testimony of Allen Smith.)

telephone pole stands and the city water hydrant, I suppose it was.

Q. Indicated on this plat as the point what, "E" or "F"; here is the hydrant and the pole.

A. Right along about there. (Indicating.)

Q. About "E" then?

A. Yes, I guess it was about "E."

Q. The front end was about "F"?

A. I don't know how long it was.

Q. Whatever the distance might be?

A. Yes.

Q. Did you see anyone from the car, either the motorman or the conductor, go back and pick up a part of the street-car after the accident, or did you observe that?

A. I saw it after it was picked up. I didn't see him pick it up. I saw it after it was picked up.

Q. Do you know whether or not the automobile at the time the street-car arrived there had come to a full stop or not? A. Yes, sir; it had.

Q. And about what point, as indicated by "A," "B" or "C," would you say the car was?

A. The car was right down in along here. A little more on the east side of 27th Avenue than it was on this side, coming very near direct straight down at a very low speed and as though as to make the turn. When the car got along in about, say about eight or nine feet, maybe ten feet, something like that, I see Mr. Hunt reach forward, [111] and he swung his car just in about that position, right there, (indicating), and was reaching over in front of his car,

(Testimony of Allen Smith.)

stooped over, when the street-car struck him.

Q. Do you know what part of his car the street-car struck? A. I do.

Q. What was it?

A. It was the outer rim of the street-car. When he swung his car here around he swung it, it looked like, as far as he could. I wondered if he would pass, and the outer rim projected out and caught the wheel.

Q. And then what effect did that have upon the street-car, what position did it assume then, or do you know?

A. The street-car was like this, the front part of the street-car, and when the street-car struck, why I saw the gentleman sitting on the other seat—I guess this gentleman here—I saw him go forward in the car.

Q. What did Mr. Hunt do, did it throw him in any way?

A. Well, I didn't notice. I seen this gentleman go forward that way, and the words I said were, "I will see what it is." The car was standing in about that position when it was struck, (indicating), and when I came over the car was very near perpendicular, not quite straight.

Q. How far back had the automobile been pushed from the tracks when you got over there?

A. From the tracks?

Q. How far away from the south rail of the street-car tracks was the automobile?

A. I would not positively say just how far back it was.

(Testimony of Allen Smith.)

Q. About what?

A. You could see about eight or nine inches.

[112]

Q. I don't mean when it struck the car; I mean after the accident.

A. I mean, after I came over to look at the car.

Q. You think the automobile was about eight or nine inches from the south rail of the tracks when you came over there? A. Just about, yes.

Q. Did you notice at any time when the automobile was going along there whether or not the automobile itself, the wheels were locked and the car was swinging in a way, or skidding?

A. After the car got within about—I was looking directly at it, standing on the next corner—when the car got within about, say eight or nine feet, say eight feet, something like that, why it swung around to the left—when he reached over like that, I suppose for his emergency brake, I suppose—of course, I don't know much about driving an automobile—his car swung like that.

Q. I am speaking of the wheels on the car skidding or sliding; I don't mean turning over, I mean slipping.

A. I don't think they did, because when he reached over he had not much more than reached over until the car was dead. He was eight or ten feet, something like that, when I saw him reach forward, and when he reached forward the car stopped dead, perfectly still.

Q. Now, as the street-car came up there, did you

(Testimony of Allen Smith.)

hear the ringing of any gongs or bells, or anything of that kind?

A. Well, the street-car—

Q. (Interrupting.) If you did, where was it when you heard it first?

A. The first bell I heard— [113]

Q. (Interrupting.) I mean when it got down here, down near the accident?

A. Well, the first bell I heard, I suppose—

Mr. FALKNOR.—We don't want any suppose about it.

A. I know. Just a moment before it struck the auto.

Q. What did you notice about the actions of the motorman at that time?

A. As I was standing on this corner here, when it was coming, when the street-car was right in about here (indicating)—

Q. That is, at the entrance of the apartment-house?

A. Just about. The motorman was looking across in that direction.

Q. You mean what direction?

A. Right across the corner of the street. I suppose he was looking at me, and I waved my hand like that, (indicating), and he didn't take any heed. I thought he was looking at me, and didn't see the auto, and I waved my hand; just about four feet before he hit the auto I saw him swing his arm and the bell began to ring, just about the width of this map before he hit the auto.

(Testimony of Allen Smith.)

Q. Then he went from there, you say, clear down to the point "E"?

A. Yes, between that there hydrant and the telephone pole or telegraph-pole, whichever it is.

Cross-examination.

Q. (By Mr. FALKNOR.)—Let me understand this last. You say the gong was ringing, do I understand you to say the gong was ringing when the street-car was about opposite [114] the entrance?

A. No.

Q. Where was the car, didn't you say it was right in there when you motioned your hand?

Q. Right about there. (Indicating.)

Q. About opposite the entrance of the apartment?

A. Yes.

Q. And you were over here? (Indicating.)

A. I was standing on this corner, at "S."

Q. You motioned your hand at the motorman, because you thought he didn't see the automobile coming?

A. Because I thought he didn't see the automobile coming.

Q. Where was the automobile at that time?

A. The automobile at that time was about eight feet from the track.

Q. He couldn't help but see the automobile if it was out on the street?

Mr. HAMMOND.—That is calling for an opinion.

Q. The street-car is at Cherry, and you are at "S," and you tell this jury that you didn't think the motorman saw the automobile approaching, and therefore

(Testimony of Allen Smith.)

you gave him the high sign? A. I did.

Q. The automobile must have been down by this apartment house somewhere at that time?

A. Right here (indicating), within eight feet. The front of the car was eight feet from the—

Q. (Interrupting.) Do you mean to tell the jury that an automobile was coming right out there on 27th Avenue, and nothing between the automobile and the motorman, and that [115] you gave the motorman the sign that there was an automobile there, because you thought he didn't see it?

A. Yes.

Q. That is right? A. That is right.

Q. If you gave him that sign, you gave it because the automobile was coming at a high rate of speed up 27th Avenue?

A. Going something like between eight and ten miles an hour.

Q. You had been in the house?

A. I just came out.

Q. Where were you going?

A. I went across over there to drop some waste.

Q. Where were you going?

A. I was figuring on working down this side of the street.

Q. You came out of the apartment-house and walked up here, and was going down that street, that was the course you were taking?

A. That was the course.

Q. Your back was to the street-car, and your back was to the automobile?

(Testimony of Allen Smith.)

Mr. HAMMOND.—Just a minute—

Q. Just a minute—in your general course your back was to the street-car and the automobile?

A. No, sir.

Q. But you stopped and turned around, is that the idea?

A. Yes, to throw away some wrapping paper from around a butcher knife and platter, and I turned around and pulled out a package of tobacco and a cigarette paper, and was rolling a cigarette when the gong rang. It was then coming across 26th Avenue.

[116]

Q. You came out of the apartment-house and you were rolling your cigarette as you went along there?

A. No.

Q. And you heard a gong and turned around, and here was the street-car and the automobile coming up the street? A. No.

Q. Do you mean to tell the jury you heard a gong way back here? (Indicating 26th Ave.)

A. Yes.

Q. What was he sounding it for then?

A. Crossing 26th.

Q. Didn't you hear it here?

A. No. It didn't cause me to turn around—if you will listen.

Q. Yes.

A. I turned around. There was a waste-can hanging on this telephone-pole. I had these platters, and they have a paper around them in a little box. I took the paper off the butcher knife and platter,

(Testimony of Allen Smith.)

which I was throwing away, and threw it into that waste can, and I turned around and was looking across the street, because I had been arguing with a woman before about the wrappers. I was rolling that cigarette when the gong rang, looking towards the apartment, thinking of the reason I could not get to call on the tenants—

Q. All this was going through your mind at that time? A. I was standing right on that corner.

Q. Rolling a cigarette?

A. Rolling a cigarette is right.

Q. You saw this automobile coming up 27th Avenue? [117] A. Yes.

Q. And it was over two-thirds down when you saw it? A. No, it was about a third down the block.

Q. I understood you to say two-thirds, about a third of the block?

A. Just about half way between the middle of the block and the corner there.

Q. Then it was about two-thirds of the block, isn't that correct? A. No.

Q. This is half? (Indicating.)

A. Stop midway between the half and—

Q. Then it was three-fourths of the block. You saw this automobile coming about three-fourths of a block away? A. Yes.

Q. Very slow? A. No.

Q. How fast?

A. Between fifteen and twenty miles, to the best of my ability.

Q. Not less than fifteen and not over twenty-five?

(Testimony of Allen Smith.)

A. Not over twenty.

Q. Then the street-car was coming how fast, thirty miles?

A. It must have been coming very near twice as fast.

Q. Then the street-car was coming twice as fast. If the street-car was going twice as fast and it was here, (indicating) it only had to go a block, and this automobile had to go three-fourths of a block. If it was going twice as fast it would get up here before the automobile got there?

A. If the street-car was going twice as fast—
[118].

Q. (Interrupting.) As the automobile it would have passed 27th Avenue before the automobile got there?

Mr. HAMMOND.—That is purely a question of argument.

Q. You don't mean to tell this jury that this street-car was going twice as fast as that automobile, do you?

A. It was running around thirty miles an hour.

Q. Now, don't you know that this block from here to here is about 235 feet—anyway I do not think it is any longer than this block, although it appears on paper. A. That is what I am looking at.

Mr. HAMMOND.—There was no evidence as to the length.

Mr. FALKNOR.—He is assuming.

Q. Anyway you stood there and continued to roll your cigarette?

(Testimony of Allen Smith.)

A. Yes, sir, I was rolling my cigarette when the accident happened.

Q. And you saw the motorman at the front end of the car? A. Yes.

Q. Looking ahead?

A. Looking directly, I thought, at me.

Q. A person on a street-car would have the whole street in his vision? A. He might.

Q. He couldn't help it, could he? You gallantly and generously gave him the high sign, "There is an automobile about five or six or eight feet from your track"?

A. When he was down in here, yes. (Indicating.)

Q. You didn't hear any bell there at all?

A. No bell until before he hit the car.

Q. He did ring the bell?

A. Just before he hit the auto. [119]

Q. Did the auto stop?

A. It just had stopped.

Q. Now, how far was the street-car away when it just had stopped?

A. Well, sir, when he just had stopped there was not but very little space between them.

Q. Then the moment it stopped the collision occurred? A. Yes.

Q. After the collision occurred what happened to the men in the car?

A. Just as the car struck the auto I saw this gentleman here bob up in the car, and the car went on past.

Q. When the impact occurred it occurred back of the front end of the car, didn't it? A. No.

(Testimony of Allen Smith.)

Q. Did the fender hit the automobile? A. No.

Q. The fender did not hit the automobile?

A. No, sir, it was the front of the car that hit the automobile, that is, the outer rim of the wheel, the outer part of the wheel.

Q. Then the other part of the car was between you and the automobile, wasn't it?

A. I could see very plainly right across.

Q. You could look right through the car and see the impact. What newspaper do you represent?

A. I used to work for the P.-I.

Q. You don't work for them any longer?

A. No, sir, I do not.

(Witness excused.) [120]

[Testimony of Thomas F. Bevington, for Plaintiffs.]

THOMAS F. BEVINGTON, produced as a witness on behalf of plaintiffs, being first duly sworn, testifies as follows:

Q. (By Mr. HAMMOND.) State your name.

A. Thomas F. Bevington.

Q. Mr. Bevington, you were in the automobile at the time of this accident at 27th Avenue and East Cherry on the 23d of this month, last year?

A. Yes, sir, I was.

Q. You and Mr. Hunt? A. Yes.

Q. I wish you would take this pointer here and indicate to the jury at the same time, and tell them the circumstances regarding that accident.

A. We were coming down 27th Avenue. I had got in the automobile at my home at 26th and Washing-

(Testimony of Thomas F. Bevington.)

ton. I drove a little ways with Mr. Hunt on 27th, and after we left Mrs. Hunt we probably had four or five blocks to go to the intersection of 27th Avenue and Cherry, where the accident occurred. She left us on 27th Avenue, and Mr. Hunt was showing—

Mr. FALKNOR.—(Interrupting.) I want questions submitted to this witness, questions that I may object to. I want questions put to this witness.

The COURT.—He asked the witness to tell the circumstances.

The WITNESS.—He asked me to tell how it happened.

The COURT.—Proceed.

(Exception noted for defendant.)

A. (Continuing.) Mr. Hunt, back here four blocks, was showing me how he could slow his car down, what he called [121] throttling it down as slow as a couple of miles an hour, and then speed it up to say twenty miles. My recollection is, from the speedometer, this three blocks back he was probably going twenty-two miles an hour, but I don't remember. When he got down on 27th Avenue, approaching the apartment house that is there, which is about 90 feet in width, he commenced to slow down. When he got to where he was approaching the crossing I think he slowed down to about eight miles an hour. We were at about the point "A," where we were sitting—the front end of the car, whatever the distance is, eight or nine feet, was nearer the railroad track—and I saw, I don't know what he saw—I saw a car a street-car, coming. As it appeared to me it was a

(Testimony of Thomas F. Bevington.)

little beyond the west end of the apartment house, the back entrance. It was somewhere near there, between there and the point "D." There was a team, a delivery wagon, with a cover on it, between the two entrances, the back entrance and the main entrance to the apartment house. I didn't observe the car, although I was looking, until I could get vision past that team, and Mr. Hunt then reached forward, and I presume—

Mr. FALKNOR.—I don't want any presumptions, Mr. Bevington.

A. Well, he reached forward and very soon he stopped. I thought he was stopped. He was not any more than stopped, but the way I thought at the time, and do now, he had just stopped.

Mr. FALKNOR.—I move that that be stricken, what the witness thought.

The WITNESS.—That was my judgment.

Mr. FALKNOR.—I don't want judgment, I want facts. [122]

The COURT.—It will be stricken, that part that he said he thought.

Q. Whereabouts did the automobile stop, as near as you can judge?

A. I think the front end of it was just about where "C" is.

Q. And about what interval of time elapsed between the time your automobile got to the point "C" and the time it was hit by the street car?

A. It was almost instantaneous.

Q. At the time you first saw the street-car I wish

(Testimony of Thomas F. Bevington.)

you would state whether or not Mr. Hunt did all that he could do to stop the car?

Mr. FALKNOR.—I object to that unless this witness knows about the mechanism of the automobile, what could be done, unless he is an expert.

The COURT.—Objection sustained.

Q. In what position was the automobile when you first observed the street-car, as being straight ahead or turned at all? A. The automobile—

Q. (Interrupting.) At the time you saw this street-car.

A. The automobile, when I saw the street-car, was just approaching the street, the front of the automobile was half way between that curb line and that center, nearly straight ahead.

Q. About that time what did Mr. Hunt do in operating the car?

A. He turned the car and reached forward for something.

Q. Turned it to the left?

A. Turned the steering gear so that the car went to the left, and reached forward immediately, and then we stopped. [123]

Q. At the time you first saw the street-car then, it was down in somewhere between the entrance, the middle entrance to the apartment house, and the rear of the apartment house?

Mr. FALKNOR.—I object to that as suggestive and leading.

A. I think it was further—

Mr. FALKNOR.—I move that his answer be

(Testimony of Thomas F. Bevington.)

stricken as to what he thinks. He answers everything "I think." I move that the answer be stricken.

The COURT.—Answer the questions without giving conclusions.

A. It was somewhere between "D" and the back entrance, as shown on that map.

Q. Where did the street-car stop after the accident, where was the rear end of the street-car?

A. At the point indicated by "E" on the map.

Q. Is this a thickly settled community in here?

A. There are houses along on 27th Avenue, and a three-story apartment house.

Q. There is a continual row of houses?

A. There is a continual row of houses, and scattered houses.

Q. There is a row of houses on the east side of 27th Avenue here, and some on the west side of 27th Avenue? A. Yes.

Q. Now, did you see Mr. Smith or Mr. Malburn out there that day? A. I did.

Q. Do you know where they were about this time, their relative positions? A. I do not.

Q. At about what rate of speed do you think the street-car [124] was going down Cherry Street at the time it struck you?

A. Twenty-five or thirty miles an hour.

Q. Where did the automobile land after it was struck by the street-car, if you remember; how far back was it pushed or knocked?

A. When it was first struck the front end of it was pushed right around that way. (Indicating.)

(Testimony of Thomas F. Bevington.)

Q. Now, then, what part of the automobile was hit first by the street-car? A. The right wheel.

Q. And then you say what happened?

A. It turned the front of the automobile around nearly square.

Q. What part of the street-car did it strike as it came around? A. The fender.

Q. The fender of what?

A. The right hand fender of the automobile, and the right hand headlight crushed right up against the street-car.

Q. What part of the street-car?

A. The fender struck the front doors, and then the right hand headlight scratched clear along the car back to the boxing on the back trucks of the street-car.

Q. And when it reached the rear end of the street-car then what took place?

A. Then there was another awful bump that sent us back there from the street-car, and clear back several feet from the street-car track.

Q. At this second bump, about whereabouts on the street-car did that occur?

A. Well, two-thirds of the way back, or back as far as the [125] boxing of the back wheel, the back end of the car.

Q. Did you observe the motorman or conductor pick up a piece of the street-car after the accident?

A. Yes.

Q. What part of the street-car was it, and where did he pick it up?

A. A piece of the boxing, and he picked it up near

(Testimony of Thomas F. Bevington.)

the east side of the intersection.

Q. Of 27th Avenue on the south side of Cherry?

A. Yes.

Q. Did you go home with Mr. Hunt after that?

A. I did.

Q. When did you see him again?

A. Well, it was two or three weeks before I saw him again.

Q. Did you observe Mr. Hunt being thrown in any particular way at the time of this accident?

A. I didn't observe much about how he was thrown.

Q. How long afterwards did you see him, did you say? A. Two or three weeks.

Q. How long have you known Mr. Hunt?

A. Oh, I have known him probably fifteen years.

Q. Have you seen him very much just prior to the accident? A. Quite frequently.

Q. How frequently?

A. I saw him every few days.

Q. Prior to that time had you ever observed any illness on his part or sickness of any kind?

A. No, sir.

Q. What did you observe—what have you observed since that time with reference to his general health?

[126]

A. I have observed that he is depressed in appearance, less fleshy and despondent.

Q. Did he ever complain of any aches or pains or illness at all? A. Yes, sir.

Q. What was it that he complained of?

(Testimony of Thomas F. Bevington.)

A. His back and his head and neck.

Q. What part of his head?

Mr. FALKNOR.—I think this is hearsay, and I object to it.

The COURT.—I think so.

Mr. HAMMOND.—I didn't look the matter up—

The COURT.—I don't care to hear any argument. I am satisfied that it is hearsay.

Mr. FALKNOR.—That statement of the condition of a man's health is hearsay evidence.

The COURT.—Yes.

Mr. HAMMOND.—Would it do any good to read a book to Your Honor?

The COURT.—No, I am satisfied this testimony is hearsay.

Q. You say you didn't see him for two weeks afterwards? A. About two weeks.

Q. What else have you observed regarding his physical condition; anything, Mr. Bevington, since the accident, that is different from what you observed before? A. He appears to tire—

Mr. FALKNOR.—I think that is rather expert testimony he is giving, Your Honor.

The COURT.—No, he can tell the comparative condition to the jury, based upon the facts as he understands them or sees them.

(Exception noted for defendant.) [127]

A. He appears to tire, get short of breath, tired with a little exertion. Sometimes his muscles twitch when he is tired making him appear distressed. He has a peculiar tired, hunted look on his face, espec-

(Testimony of Thomas F. Bevington.)

ially when he has exerted himself.

Q. Do you know whether or not the wheels of this car skidded after he came into Cherry Street, or whether or not the car skidded? A. No. I do not.

Q. State whether or not you heard the ringing of any bell or gong or other alarm just at the time you came into Cherry Street, or before?

A. Just about the time that the collision occurred the gong commenced to ring vigorously. Before that I heard no gong.

Q. Did you ever go out and look at this particular car after the accident, with Mr. Hunt? A. Yes.

Q. Did you take any measurement as to the distance the car extends out over and beyond the rail of the track? A. Yes, sir.

Q. About how far, what is the measurement, what distance did this particular car extend beyond the track, beyond that rail?

A. I haven't the memorandum, but as I remember it was about eighteen inches. Mr. Hunt took that memorandum, I didn't.

Mr. HAMMOND.—That is all.

(Whereupon the Court takes an adjournment until to-morrow, September 25, 1914, at the hour of 10:00 A. M.) [128]

Friday, September 25, 1914, 10:00 A. M. Continuation of proceedings pursuant to adjournment. All parties present as at former hearing. Jury polled—all present.

THOMAS F. BEVINGTON, on the witness stand for cross-examination.

(Testimony of Thomas F. Bevington.)

Mr. FALKNOR.—Your Honor, before the plaintiff rests I want to ask a couple of questions of Mr. Hunt and of Mr. Smith, further cross-examination.

The COURT.—Very well.

Q. (By Mr. FALKNOR.) Mr. Bevington, I believe you testified that in this locality where the accident happened it was what you would consider a thickly settled community? A. Well, fairly so.

Q. And there were people working on the streets around there, and people on the street?

A. At that time?

Q. Yes. A. I didn't notice.

Q. You noticed a wagon on the street you say; did you notice this wagon on the street? A. Yes.

Q. That was on the street and the street-car was on the street? A. Yes.

Q. And did you notice the automobile coming down the other way on the street? A. Yes, sir.

Q. So there were people and vehicles on the street around there? [129] A. Yes.

Q. In the vicinity of this crossing? A. Yes.

Q. Now, you say that Mr. Hunt was demonstrating to you what he could do with his car, wasn't he?

A. Yes.

Q. Showing you how slow it could run, and you have a recollection of seeing the speedometer, and going at least twenty-two miles an hour?

A. Yes, sir.

Q. That was not very far from where the accident happened, was it? A. About two blocks.

Q. Well, now, you told him at the time that he was

(Testimony of Thomas F. Bevington.)

violating both the State and city law when he was doing that? A. I did not.

Q. You did not?

Mr. HAMMOND.—If the Court please, it is absolutely immaterial what he was doing two blocks away from this accident.

Mr. FALKNOR.—I want to show the carelessness of this driver.

The COURT.—Cross-examine.

Q. You are an attorney at law, Mr. Bevington?

A. Yes.

Q. You knew that he was operating that car in violation of both the State and city law when he was operating it at twenty-two miles an hour?

A. I knew the limit was twenty.

Q. You knew the limit was twelve miles on the streets of the city, didn't you?

A. I didn't so understand it. [130]

Q. Don't you, as an attorney, know that in an ordinarily settled community the state law limits the speed of automobiles to twelve miles an hour, as an attorney at law don't you know that?

A. No, I think that escaped me at that time.

Q. But you did know that at no place in the city could a man operate an automobile at more than twenty miles an hour?

A. I knew that provision of the ordinance.

Q. And whether he could operate at twenty miles an hour depended on where that would be, whether that would be reasonable under all the circumstances? A. Yes.

(Testimony of Thomas F. Bevington.)

Q. So then you did know that at least two blocks from there he was violating the city ordinance?

A. I knew he was going—in going from little of nothing up to twenty-two miles—his speedometer ran up to twenty-two—he was two miles in excess before he slowed down.

Q. And you said nothing to him about that?

A. No.

Q. Now, at what speed did he attempt to cross East Cherry Street on? A. About eight.

Q. Did you tell him that he was violating the State law when he did that? A. No.

Q. You knew that he was violating the state law when he crossed that intersection at more than four miles an hour, didn't you? [131] A. No.

Q. As an attorney at law, Mr. Bevington?

A. I just said no.

Q. Now, Mr. Bevington, you have had a great deal to do with personal injury litigation, haven't you?

A. I have had considerable experience with personal injury litigation.

Q. As representing both sides of the controversy?

A. Yes, sir, I have represented both sides of the controversy.

Q. And you tell this jury that you didn't know that the state law provided that where there are other people in the vicinity you must not cross another street at more than four miles an hour in an automobile? A. I have just said and repeated—

Q. That you didn't know that?

A. That I was not familiar with this State law, if

(Testimony of Thomas F. Bevington.)

that is the State law.

Q. Now, you were talking to each other about this machine that you are demonstrating, were you not?

A. Yes, we were talking about the machine some.

Q. You were not paying much attention to street-cars, were you?

A. Back two or three—from Yesler Way over until we approached the crossing where there was a street-car track we were not paying attention to street-cars, I was not.

Q. How is that?

A. I was not paying attention to street-cars until we came to the crossing where there were street-car tracks.

Q. Were you looking for street-cars when you came by this apartment house?

A. I certainly was. [132]

Q. As quick as you got by the apartment-house you looked, did you? A. Yes.

Q. And you couldn't see this street-car?

A. I saw the street-car after we passed the corner and we could see by the team that was there.

Q. You say the moment you passed the corner of this house; this line represents the corner of the house? A. Yes.

Q. You were coming up a little to the right of this 27th Avenue. The moment your machine was here (indicating) you began to look for a street-car, and you couldn't see it?

A. I was looking for a street-car both ways, as we approached.

(Testimony of Thomas F. Bevington.)

Q. There was no building to your right, was there?

A. No.

Q. You could just out of the corner of your eye see that there was no street-car coming in the other direction? A. I didn't observe any.

Q. You didn't have to turn your head to see if a street-car was coming from the other direction?

A. Not very much.

Q. You didn't have to turn it at all?

A. Probably not.

Q. Out of the corner of your eye you could see. You knew there were street-cars operated on East Cherry Street? A. Yes.

Q. Mr. Hunt knew that too?

A. I presume he did.

Q. Don't you know that he did?

A. I don't know what another man knows, but I presume, of [133] course, that he did.

Q. The moment you got up here so that you could look around the corner of the house, did you look?

A. I did.

Q. Now, do you tell this jury that you could not see that street-car? A. No, I do not.

Q. Now, why couldn't you see that car?

A. I told the jury how I saw it.

Q. If you looked the moment your line of vision could pass that apartment-house why couldn't you see that street-car?

A. Well, there was a team in there that obstructed the view.

Q. Do you mean to tell the jury that that one team

(Testimony of Thomas F. Bevington.)

obstructed your view of a whole street-car?

A. I mean to tell the jury just what I have said, that it did obstruct my view until we passed the line from the street-car to where we were, past the team.

Q. Then that one team was bigger in your vision than the street-car, is that the idea?

A. No, a team is not bigger than a street-car,

Q. Why did it obstruct your view of the street-car?

A. Simply because it was right between us and the street-car, and I couldn't see through it or over it.

Q. You were up some distance from the ground?

A. I was up the ordinary distance.

Q. Your head was about where it would be if you were standing in the street? A. About.

Q. Now, do you mean to tell the jury that standing in the street there where your vision would pass that building, [134] that that one wagon would obstruct a whole street-car?

A. That is exactly what I have told them and mean to tell them.

Q. That must have been a very big team?

A. An ordinary team.

Q. How far was that car away when you first saw it, Mr. Bevington?

A. It had not approached the back entrance of the apartment-house.

Q. Do you call this the back entrance here where my finger is, or here? (Indicating.)

A. I call the back entrance where you first put your finger.

(Testimony of Thomas F. Bevington.)

Q. There. It had not reached that point yet?

A. No.

Q. And you were at "A" at that time? A. Yes.

Q. And this street-car was about 150 or 180 feet away, is that what you mean to tell the jury?

A. It was somewhere between that back entrance and "D." I think nearer the back entrance.

Q. Then your car went from "B" to "C," didn't it, the front of your car ran from "B" to "C"?

A. Yes.

Q. And your car was going at about eight miles?

A. Yes.

Q. Your car went the distance of twelve feet, didn't it? A. I think eleven or twelve feet.

Q. And the street-car got to "C" about the same instant that the front of your automobile did?

A. We got to "C,"

Q. Didn't you tell the jury that they were about contemporaneous [135] yesterday?

A. I think I told the jury that when we got to "C" and had just stoppel it was only an instant, a short time, a very short time.

Q. As a matter of fact, you both got to the point at about the same time? A. No, we did not.

Q. How much difference in time was there?

A. It was very short.

Q. So short you couldn't measure it?

A. Well, I would not think it was a second.

Q. Then the street-car travelled about, at least 150 feet while your car went twelve feet?

(Testimony of Thomas F. Bevington.)

A. The street-car went from 100 to 175 feet, in my judgment.

Q. While you went twelve feet? A. Yes.

Q. Then the street-car went approximately 96 miles per hour, didn't it? A. No.

Q. How can you figure it out. If the street-car went at least 150 feet while your car went twelve feet, the street-car went more than twelve times as fast as your car, and if your car was going eight miles an hour the street-car must have been going 96 miles an hour, isn't that right?

A. No, that is not right. Your figures are wrong. The street-car going thirty miles would travel about 42 feet in a second, and an automobile going between eleven and twelve miles would go—at eight miles would go between eleven and twelve feet, so your figures are wrong.

Q. While your car went twelve feet the street-car went 150 [136] feet, didn't it?

A. I think somewhere—

Q. Answer my question. Your automobile went twelve feet while the street-car went 150 feet, didn't it, because they both got to the point at the same time?

A. I didn't say it was 150 feet. I said from 100 to—

Q. Well, let us say 100 feet, that is the nearest distance. While your automobile went twelve feet the street-car went 100? A. Yes.

Q. Then how much faster was the street-car going than the automobile. It would be as many times as

(Testimony of Thomas F. Bevington.)

fast as twelve is contained in 100, which would be eight times; that is right, isn't it? And if your car was going eight miles an hour, according to your lowest calculation, it would make the street-car going 64 miles an hour?

A. It is not my evidence, Mr. Falknor, that we were going all that time. I said it took him a little time to get his emergency brake set, and we were stopped for an instant. That would take up part of it.

Q. What part of the street-car first came in contact with your automobile?

A. The iron band in the very front of the car.

Q. Did you hit the fender? A. No.

Q. As a matter of fact, the first part of the car that came in contact with the automobile was several feet back from the front end, isn't that right?

A. No.

Q. You have a claim against the company, too, Mr. Bevington? [137] A. I was injured.

Q. Oh, yes. If you can recover in this case you intend to press a suit against the company too, don't you?

A. Not if I get along the way I think I ought to with Mr. Carson.

Q. But you have a claim you are pressing against the company yourself? A. Not pressing.

Q. Well, you have presented a claim to the company? Now, be frank.

A. I have talked with Mr. Carson.

Q. If you can recover in this case for Mr. Hunt

(Testimony of Thomas F. Bevington.)

you intend to sue for yourself, unless the company digs up, isn't that right?

A. I rather think if you don't pay me something—

Q. You are going to sue?

A. I will be obliged to sue, as much as I regret it.

Q. You are very much interested in Mr. Hunt recovering in this case?

A. Well, I am interested. I don't think overly interested.

Q. Now, you had a talk with the claim agent that day, didn't you?

A. I phoned to the Claim Department that day.

Q. What time did you phone to the Claim Department?

A. As soon as Mr. Atkinson of the Pacific Car Company arrived—he was phoned to first—and then I phoned.

Q. He was the agent of the company from whom the car had been purchased? A. Yes.

Q. He came out and helped bring the car in?
[138]

A. After consultation with him we decided to phone to the Claim Department so they could see the situation just as it was, and we did.

Q. Did the Claim Department ask if anyone in the automobile was hurt?

A. I think whoever talked to me asked me.

Q. What did you tell them?

A. I told them fortunately there was no serious damage.

Q. You said "Fortunately nobody was hurt."

(Testimony of Thomas F. Bevington.)

A. I would not be sure about the language.

Q. You know what you told the Claim Department; you said, "Fortunately nobody is hurt."

A. Mr. Falknor, I told you I do not remember the exact language.

Q. You don't remember whether you told him nobody was hurt or not?

A. I told him, as near as I can remember, that fortunately there was nobody seriously hurt.

Q. Didn't you say, "Fortunately nobody is hurt"; you didn't say anything about "seriously" at all?

A. I think I put it just exactly as I stated it now.

Redirect Examination.

Q. (By Mr. HAMMOND.) With regard to your claim against the Seattle Electric Company, isn't it a fact that you have offered to accept a settlement that was offered by Mr. Carson, provided they would settle Mr. Hunt's claim?

Mr. FALKNOR.—Just a minute, I object—

Mr. HAMMOND.—They have gone into this.

Mr. FALKNOR.—Just a minute. [139]

The COURT.—Just a minute, gentlemen.

Mr. FALKNOR.—I object to any question of that kind.

The COURT.—The objection is sustained as to the offer of compromise.

Mr. HAMMOND.—Well, Your Honor—

The COURT.—I don't care to hear any argument. I am satisfied it is wrong.

Mr. HAMMOND.—You will allow us an exception, please.

(Testimony of Thomas F. Bevington.)

The COURT.—Yes.

(Exception noted for plaintiffs.)

Q. Mr. Bevington, isn't it a fact that Cherry Street, where this accident happened, is the main and the only paved road leading directly from that community out in the Denny Blaine and Madrona districts?

Mr. FALKNOR.—I object to that as immaterial.

The COURT.—He may answer.

(Exception noted for defendant.)

A. It is the main thoroughfare. There may be others paved.

Q. I mean leading directly down to the city?

A. It is the main thoroughfare.

Q. All traffic from that district goes down this Cherry Street?

Mr. FALKNOR.—I object to that as immaterial.

The COURT.—He may answer.

(Exception noted for defendant.)

A. The main part of it.

Q. (By Mr. FALKNOR.) About all the streets are paved out there now coming in are they not, or do you know?

A. I don't know. I don't think so.

Q. You don't know?

A. I don't think they are, Mr. Falknor. [140]

Q. (By Mr. HAMMOND.) State whether or not, Mr. Bevington, it is not a fact that from this point "A" looking west, that a team in front of your vision would make the direction up, and not straight across the top of the horses or the covered wagon?

(Testimony of Thomas F. Bevington.)

A. Slightly, yes.

Q. The street-car would not extend above any covered wagon that might be there from the point where you stood there, or sat in the car?

A. It would not.

Q. (By Mr. FALKNOR.) You were looking at the front end of the wagon, were you not?

A. Yes.

Q. The front end of the wagon was about how wide, five feet wide, four feet wide?

A. About that, four and one-half or five feet.

Q. You were looking at the front of it?

A. Yes, it was standing out a little, probably.

Q. Kind of bulging out a little, was it?

A. I didn't say it was bulging out.

Mr. FALKNOR.—That is all.

Mr. HAMMOND.—That is all.

(Witness excused.) [141]

[Testimony of Mrs. Mary A. Hunt, for Plaintiffs.]

MRS. MARY A. HUNT, produced as a witness on behalf of plaintiffs, being first duly sworn, testifies as follows:

Q. (By Mr. BEVINGTON.) State your name?

A. Mary A. Hunt.

Q. Mrs. Hunt, you are the wife of M. A. Hunt?

A. Yes.

Q. One of the plaintiffs in this action? A. Yes.

Q. About what time in the afternoon of September 23, a year ago, did you see your husband?

A. I think it was between two and three, perhaps half past two.

(Testimony of Mrs. Mary A. Hunt.)

Q. Where were you?

A. I was at Mrs. Duvers' at 167 27th Avenue.

Q. What time did you go home from there?

A. We went home early in the evening. I think perhaps eight o'clock.

Q. Prior to September 23, the time of this collision, what was Mr. Hunt's apparent condition of health?

A. He seemed to be in the very best of health.

Q. What was his condition as to being nervous, depressed, or otherwise prior to the accident?

A. Well, I never saw him especially nervous until this last year. His nerves were steady, and he was never depressed.

Q. You may explain to the jury what his condition was as to sleeping or otherwise, as it appeared to you prior to the injury?

A. Well, he always slept soundly, as any well person would.

Q. When he came to Mrs. Duvers that afternoon before you went home how did he appear as to being in pain or distress [142] that afternoon, explain the jury.

A. When he stepped out of the auto—only Mr. Crosby brought him—he didn't seem to be able to handle himself very well, and all the time he was sitting sort of hunched over like an old man, and I noticed him put his hands across him as though he was hurt there. He looked flushed and nervous, and very much excited, and Mrs. Duver had him lay down. He was on the lounge most of the time we were there.

(Testimony of Mrs. Mary A. Hunt.)

Q. Now, when you went home what did he do?

A. When we stepped off the street-car to go to our apartment he fell, pretty nearly fell. I jumped and caught him in time and he put his hand to his back. "Why," he says—

Mr. FALKNOR.—Never mind.

Q. You need not tell what he said, just what he did.

A. I helped him to the door of the apartment and onto the elevator, but it was with difficulty that he got from the elevator to our apartment. He went right to bed.

Q. Then what did he do?

A. He went to bed just as soon as he could get there.

Q. During that night what was his condition as to sleeping or otherwise?

A. He didn't sleep—I am sure he didn't sleep half an hour at a time.

Q. Describe further, without stating what he said to you, describe how he appeared during the night, what his condition was as it appeared to you?

A. He was very nervous and delirious, and the muscles of his arms and face and legs twitched constantly all night long.

Q. When did you call the doctor?

A. Early in the morning. [143]

Q. And who did you call?

A. Dr. J. Warren Richardson.

Q. What did the doctor do for him?

A. He gave him two prescriptions to have filled, one was to be taken internally and the other to be

(Testimony of Mrs. Mary A. Hunt.)

applied externally wherever there seemed to be any pain, wherever he complained of any pain. That is all he did that time.

Q. What was Mr. Hunt's condition, as it appeared to you, during that first four or five days?

A. There were five days when he seemed to be in agony. His face was drawn most of the time as though in severe pain. Those nerve twitchings he had constantly. Sometimes they were worse, and I don't think two hours of any twenty-four he knew much of anything. Part of the time he was really delirious and part of the time just partly so.

Q. Do you remember of anyone calling during that time from the street-car company, and if so, who?

A. Yes, Mr. Lidston was there twice, and Dr. Willis once.

Q. How often did Dr. Richardson come?

A. Well, he came every day of those five days, and I think once or twice he came a second time when I phoned him.

Q. What did the doctor do as to bandaging?

A. I think it was the second day—I had phoned him that Mr. Hunt thought—

Q. You need not tell about phoning, just tell what he did.

A. He came and bandaged him all around with some kind of adhesive bandages.

Q. After those bandages were on a while were they taken off and others put on, do you know?

A. They were on several days, but I don't remember of others [144] being put on, I am sure.

(Testimony of Mrs. Mary A. Hunt.)

Q. Now, from that time on how long was Mr. Hunt confined to his home?

A. He didn't get up or try to get up for a week. He couldn't handle himself enough to do so. About the end of the second week he began to try to crawl around, but didn't dress. I think it was the end of the third week before he was dressed, and either the end of the third week, or early in the fourth week he hobbled with my help to the elevator and went down and sat in the lobby, but didn't try to go out. Well, I think he went out once that week. He might have gone out once the third week, but I think not. But the second month practically he was confined to the flat. If he went out, and he did go once or twice or three times, he was in bed two or three days afterwards.

Q. How did he appear as being lame or otherwise in his back?

A. Oh, he couldn't walk. His back appeared to be lame much longer than that. For several months and even yet when he tried to get up sometimes he would catch himself there as though he can hardly straighten up.

Q. During that four weeks in particular, and ever since, describe to the jury what his condition has been, as it appeared to you, as to being sleepless or otherwise?

A. Oh, he has not slept well for six months. He sleeps very restlessly, would awaken many times in the night and awaken me by his tossings, and the latter six months he has apparently slept much

(Testimony of Mrs. Mary A. Hunt.)

better, but he never wakes up seeming rested. He doesn't act as though he had had any sleep although he has laid there apparently sleeping all night.

[145]

Q. How does he appear when he gets up?

A. He acts as though it was the greatest effort in the world to get out of bed, and get any clothes on and to move around, and he does not seem to be able to make any kind of a quick move.

Q. How does he appear as to being depressed or otherwise?

A. Well, he has been worse at times, but depressed the whole year.

Q. About when was it that he undertook to go to work as a barber, if you remember?

A. He had been home more than five months when he tried to work first.

Q. How long did he work the first time he tried?

A. He worked about two months, short hours, but there were some days during that time that he didn't work, when he was not able to work.

Q. What was his apparent condition when he would come home from work during those two months?

A. He was always all in, at noon or at night, whether he worked one hour or three, and he never worked longer than three at a time, hardly.

Q. Do you know, and if so state, what the fact is as to his losing or not losing weight?

A. Well, he is from fifteen to twenty pounds lighter than he was a year ago, before he was hurt.

(Testimony of Mrs. Mary A. Hunt.)

His face is much thinner and his eyes are hollow.

Q. What effect—describe in your own language, as it appeared to you—has mental or physical exertion had upon him? Just describe that in your own language, during this last year? [146]

A. Well, he does not seem to have the strength of a baby, either mentally or physically. The least little move just tires him out so that he has to lay down, and with mental exertion I think it is more noticeable. It is very hard for him to carry a connected train of thought.

Mr. BEVINGTON.—That is all.

Mr. FALKNOR.—That is all.

(No cross-examination—witness excused.) [147]

[Testimony of Dr. J. Warren Richardson, for Plaintiffs.]

DR. J. WARREN RICHARDSON, produced as a witness on behalf of plaintiffs, being first duly sworn, testifies as follows:

Q. (By Mr. BEVINGTON.) State your name?

A. J. Warren Richardson.

Q. Doctor, are you a regular physician?

Mr. FALKNOR.—I will admit that he is a licensed practitioner, so go ahead.

Q. Doctor, when were you called to attend Mr. Hunt after September 23, a year ago?

A. Either September 23d or 24th, I don't remember which now.

Q. Describe to the jury in your own language the condition that you found him in, as he appeared to you?

(Testimony of Dr. J. Warren Richardson.)

A. Well, Mr. Hunt was in bed when I got there, and he complained of severe pain in the back, at the junction of the three lower ribs on the right side, and also of pain in the spine higher up; and also of pain in the front of the abdomen, just the upper part on the right side, over the region of the liver, and he also complained of some other bruises, that is, pain in the legs, but the great part of his pain was in the back. He complained of headache too, severe headache.

Q. In your examination of him what did you find as to the condition of the 10th, 11th and 12th ribs on the right side?

A. I found that the ligaments were torn on those three lower ribs on the right side, and he was suffering by reason of his pain in that area from traumatic pleurisy. That is, there was some pleurisy developed due to the injury.

Q. The pleura that covers the vitals, and especially the right side, what did you find as to an injury to that? [148]

A. That is what I say; it was injured and caused traumatic pleurisy.

Q. How often did you see him during the first week, say? A. I saw him every day.

Q. And any time more than once a day, do you remember?

A. I don't remember. I think there was once I went twice a day.

Q. Now, during that first week, what, if anything, did you do in the way of bandages?

(Testimony of Dr. J. Warren Richardson.)

A. I strapped this side, either the first or second day, I don't recall just now which, with adhesive plaster strips so as to put those parts at absolute rest.

Q. How long did you leave those straps on?

A. I think it was nine days, and then put on another—reapplied them, a new set.

Q. After nine days?

A. I think it was nine days.

Q. Do you remember how long you left the ones on?

A. I don't remember exactly, but it was about the same length of time. They usually begin to irritate after that time, and you have to take them off.

Q. What was his apparent condition as to being nervous during the four or five days, or sleepless?

A. He was very nervous, and I had to give him something internally to make him sleep, to help him sleep, and I also prescribed some stuff to rub on the outside.

Q. About how long did you continue to go to the house?

A. Well, after the first week I only saw him every second or third day for another week or ten days. Then he came to the office after that. [149]

Q. When he first came to the office what was his apparent condition as to nervousness?

A. He was nervous and weak. While it is a short distance from his place to the office, he would get all in just coming down there. He complained of this severe tired feeling, being nervous, and still having

(Testimony of Dr. J. Warren Richardson.)

trouble in sleeping.

Q. How did he look?

A. Well, he looked pale and depressed.

Q. Did you take his weight from time to time?

A. Yes, sir.

Q. Tell the jury whether he gained or lost weight?

A. He lost somewhere around twelve or fourteen pounds.

Q. Do you remember about when it was, the last time you saw him before he went to the ranch?

A. I think that was February I saw him last, February 12, somewhere along there.

Q. What was his apparent condition then?

A. Well, he was weak and very much run down.

Q. What was his appearance as to being weak and run down in February as compared with what it had been before?

A. It was very marked, the difference in the man. He was very much more run down than formerly, and he only weighed then 162 pounds, I believe.

Q. Do you remember whether he had been working any then?

A. I don't think he had worked at all at that time,

Q. You have examined him lately? A. Yes, sir.

Q. On more than one occasion?

A. I examined him about three or four days ago.

Q. Now, assuming that he was in good health on and prior to [150] about eleven o'clock, A. M., September 23, 1913, not suffering from any mental or physical nervous trouble, and on that date at that time he was operating an automobile which was

(Testimony of Dr. J. Warren Richardson.)

struck by a rapidly running street-car, the impact being such as to violently throw him forward against the wheel of the steering-gear of said automobile and then back, and that said Hunt was thereby shocked and strained and bruised and injured, and the injuries to his back and spine, and particularly between the cervical regions thereof, and the 10th, 11th and 12th ribs on the right side of said Hunt were badly bruised and injured; that the pleura covering his vitals, especially on the right side, was badly injured, causing traumatic pleurisy; the said Hunt's abdomen was badly bruised; that for five days thereafter said Hunt was at times delirious and unable to sleep; during said time he suffered great pain in his side and back and neck, and had severe headaches; that he was confined to his home for a period of about four weeks, to his bed most of that time; and ever since said collision said Hunt has suffered with pains in the back of the neck, which were at some times very severe; sore, still are sore, but somewhat improved; during said time and up until the present time said Hunt has suffered with severe headaches, and any considerable mental or physical exertion during all of said times has caused and still causes said Hunt to be tired and nervous and exhausted; when he sleeps he is subject to nightmare, his muscles being inclined to twitch; that he is irritable and despondent; that he has lost from twelve to fifteen pounds in weight; assuming those facts to be true, [151] what, under such circumstances, would you say the plaintiff M. A. Hunt has

(Testimony of Dr. J. Warren Richardson.)

been and is suffering with, if anything?

A. He is now and has been suffering from traumatic neurasthenia, that is what ails the man.

Q. Under the same statement of facts what would you say was the cause of the conditions described?

A. Resulting from the accident.

Q. What would you say, doctor, as to the probable duration of neurotic condition, and the probable permanency of the same, or the chances for recovery?

A. It is impossible to tell the duration of it. It may extend a long time. It may not be permanent. You can't tell.

Mr. BEVINGTON.—That is all.

Cross-examination.

Q. (By Mr. FALKNOR.) It will probably disappear as soon as this suit is over, won't it, doctor?

A. It is possible it might.

Q. Quite probable, isn't it?

A. No, not quite probable.

Q. Quite possible?

A. It is possible that it might.

Q. Is he a nervous man now? A. Yes.

Q. Does he act nervous; look at him, perfectly quiet, isn't he?

A. You can't tell by the looks of him.

Q. A nervous man fidgets around, don't he?

A. Not always.

Q. Usually? [152] A. He might.

Q. Well, usually they do fidget around a good bit in the courtroom, don't they? Did you see any evi-

(Testimony of Dr. J. Warren Richardson.)

dence of nervousness about him since you came in the courtroom? A. Not now.

Q. He seems to be perfectly at ease, don't he?

A. He seems to be now.

Q. Does he look like a sick man to you?

A. You can't tell by the looks of a man.

Q. Does he look like a sick man to you, doctor?
He don't does he?

A. What do you mean by sick man, there are different kinds of sickness.

Q. Does his complexion and face and eye indicate to you that he is a sick man?

A. He don't look as good as he used to.

Q. Does he look like a sick man?

A. You will have to qualify your "sick man," what that means.

Q. He looks like a man in good health, wholly fit that way? A. Not the best of health.

Q. If you didn't know him, never saw him before, and cast your eye on him, and was asked if that man looked like a man in good health, you would say yes?

A. I wouldn't without examining him.

Q. You would not say he looked like a sick man?

A. He don't look as though he had typhoid fever.

Q. You would not say he looks like a sick man.
When did you say you last saw him, doctor?

A. About three days ago.

Q. How many? [153] A. Three days ago.

Q. What was his temperature?

A. At that time?

Q. Yes. A. Normal.

(Testimony of Dr. J. Warren Richardson.)

Q. That indicated he was a healthy man, so far as temperature was concerned? A. Yes.

Q. What was his respiration? A. Twenty.

Q. Was that normal? A. Practically.

Q. Did you take his reflexes? A. Yes.

Q. What were they? A. Practically normal.

Q. That indicated what, doctor?

A. It didn't indicate much of anything.

Q. What did you take them for?

A. I wanted to see if they were normal.

Q. What did you want to know if they were normal for? A. I wanted to know if they were lost?

Q. If they were normal that indicated that his nervous system was all right, didn't it?

A. Not necessarily.

Q. But ordinarily that is what you take them for?

A. No, I wanted to see if the reflexes were lost.

Q. If those reflexes had been exaggerated or gone that would have indicated that his nervous system was out of order?

A. That would have indicated an entirely different condition. [154]

Q. In neurasthenia you find the reflexes exaggerated, don't you? A. Not very often.

Q. Isn't that the first symptom that you look for in neurasthenia, exaggerated reflexes? A. No.

Q. You tell this jury, as a practitioner, now, doctor, that in genuine cases of neurasthenia—not those that simply exist until the trial is over and then disappear—but in genuine cases of neurasthenia, that the reflexes are not exaggerated?

(Testimony of Dr. J. Warren Richardson.)

A. Yes, I will tell them that.

Q. Generally they are exaggerated?

A. Not unless there is some acute condition in the spinal cord.

Q. You took the eye and patellar—how many did you take?

A. I took his eye reflex and the patellar.

Q. Did you take the ankle? A. Yes.

Q. You took them all from the head to the foot?

A. Yes.

Q. And you found them all normal?

A. Practically normal.

Q. Didn't that indicate that he had no neurasthenia? A. No, it did not.

Q. Didn't it indicate that his nervous system was O. K.? A. No.

Q. What symptom did you find that indicated neurasthenia? A. Well, the man was run down.

Q. What was run down?

A. The man was run down.

Q. The man was run down? [155]

A. He couldn't hardly stand examination.

Q. How did you know—that was subjective, wasn't it, that was purely subjective, you had to take his word for that?

A. Not entirely. I took the man's weight. He is not up to the usual weight.

Q. How much does he weigh? A. 162 pounds.

Q. Isn't that a good weight for a man of his height? A. It is not his usual weight.

Q. How do you know?

(Testimony of Dr. J. Warren Richardson.)

A. Before the accident he weighed—

Q. (Interrupting.) How do you know he did, did you ever weigh him before the accident? A. No.

Q. You don't know whether that is his usual weight or not? A. Absolutely not.

Q. That may be his usual weight, might it not?

A. I don't believe it is.

Q. Then that is subjective? A. Yes.

Q. What objective sign, that is, not anything that he told you, that you had to depend on him—what objective sign did you find that he had neurasthenia; not a one, did you, doctor?

A. You have to depend on the objective symptoms a good deal.

Q. Every objective symptom was against what he told you, wasn't it? A. No.

Q. What objective symptom was not against what he told you?

A. Well, the reflexes didn't bear it out. [156]

Q. His reflexes disproved what he told you, so far as they spoke; he couldn't control them, could he?

A. No.

Q. That is involuntary? A. Yes.

Q. What objective sign did not speak against what he told you; his temperature was all right?

A. Yes.

Q. And his respiration was all right? A. Yes.

Q. The reflexes were all right? A. Yes.

Q. Did you take his blood pressure?

A. I did not, no, sir.

Q. You didn't take that? A. No.

(Testimony of Dr. J. Warren Richardson.)

Q. But everything you did take was against what he told you, wasn't it, doctor? A. Yes, sir.

Mr. FALKNOR.—That is all.

Mr. BEVINGTON.—From your examination, the result of which you have related here, is it your judgment that he is still suffering with that neurosis?

A. Yes, sir.

Q. (By Mr. FALKNOR.) If he was suffering what would happen to his temperature?

A. It would not affect his temperature, necessarily.

Q. Necessarily; ordinarily suffering affects the temperature, doesn't it—I don't mean the temperature, I mean his heart-beats; you took his pulse, did you? [157]. A. Yes.

Q. Was that normal? A. Yes.

Q. That was normal. Now, when a man is suffering, when he is in pain, what effect does that have upon his pulse? A. Sometimes it runs it up.

Q. Not sometimes, but generally runs it up?

A. Generally, but not always.

Q. Did his pulse rate go up?

A. After the examination?

Q. Before or after, or during, or any time?

A. No.

Q. Remained the same. Did you press on his body? A. I did.

Q. Now, isn't it true that if a man is suffering pain and you begin to press on those parts that are painful it sends the pulse rate up? A. Not always, no sir.

Q. It generally does? A. It often does.

Q. Did it in this case? A. No.

(Testimony of Dr. J. Warren Richardson.)

Q. Then so far as the pulse rate spoke, and a man cannot control that, can he doctor? A. No.

Q. You cannot control your pulse rate, that is an involuntary action; and so far as that spoke it was against what he told you?

A. So far as that was concerned.

Q. Did he have any fractured ribs? [158]

A. No.

Q. Did you take an X-ray? A. No.

Q. Why didn't you take an X-ray; you didn't think his ribs were hurt enough to take an X-ray picture?

A. I didn't consider his ribs were fractured.

Q. Were there any abrasions on his body?

A. No, sir.

Q. The skin was not broken any place, even?

A. No.

Mr. FALKNOR.—That is all.

(Witness excused.) [159]

[Testimony of Dr. R. France, for Plaintiffs.]

Dr. R. FRANCE, produced as a witness on behalf of plaintiffs, being first duly sworn, testifies as follows:

Q. (By Mr. BEVINGTON.) State your name.

A. R. France.

Q. Doctor, you are a regular practitioner?

Mr. FALKNOR.—I will admit that the doctor is a licensed practitioner. He looks like it, anyway.

Q. Doctor, are you in the same suite of offices with Dr. Richardson? A. Yes, sir.

Q. Have you met Mr. Hunt?

(Testimony of Dr France.)

A. I have met Mr. Hunt, yes, sir.

Q. Doctor, assuming as true that the plaintiff—I will ask you this, were you sitting back here so that you heard the question, the hypothetical question I read to Dr. Richardson? A. Yes, I heard it.

Q. Assuming the facts in that question as read to Dr. Richardson to be true, what would you say, under the circumstances, the plaintiff M. A. Hunt has been and is suffering with, if anything?

A. He is probably suffering from traumatic neurasthenia.

Q. And under the same state of facts what would you say was the case of the condition described?

A. Probably due to an injury.

Q. What would you say as to the probable duration of that neurotic condition? Describe the probable permanency of the same, or the chances of recovery.

A. The majority of them recover. Perhaps two-thirds of them [160] will recover, and the other third may recover only in part.

Mr. BEVINGTON.—That is all.

Cross-examination.

Q. (By Mr. FALKNOR.) Most of them recover right after the litigation, don't they?

A. After the litigation is over helps these cases a lot.

Q. When they quit trying to get money they get well?

A. Litigation in these cases is bad for them. It is one of the external stimulants that mitigates

(Testimony of Dr France.)

against the recovery of these people, and the longer the case is in litigation, the more it is kept up, the more these people have to be examining themselves and thinking about it all the time, why the worse it is for the case. Litigation never does these people any good.

Q. When they get away from the doctors and lawyers they get well. A. It helps.

Mr. FALKNOR.—That is all.

(Witness excused.)

Mr. BEVINGTON.—We rest.

Mr. FALKNOR.—As I requested, I want to ask Mr. Hunt and Mr. Smith some questions. [161]

[Testimony of M. A. Hunt, for Plaintiffs (Recalled).]

M. A. HUNT, recalled as a witness on behalf of plaintiffs for further

Cross-examination.

Q. (By Mr. FALKNOR.) Mr. Hunt, did you not also while you had this automobile have a head on collision, where you ran into another automobile ahead of you? A. No, sir.

Q. Did you not run into another automobile and break one of your headlights?

A. No, sir, I never did.

Q. Did you not run into something and break one of your headlights?

A. I did run into something and break one of my headlights, but it was on account of grease running into the brakes.

(Testimony of M. A. Hunt.)

Q. Something got wrong with your brakes?

A. That was the car's fault, and not mine.

Q. Anyway you did run into something that was ahead of you at some other time? A. Yes.

Q. Something got wrong with your brakes?

A. The grease ran into the brake-wheel and I had no pressure on my brakes. I couldn't stop the car. I didn't know it.

Q. You had been driving all day?

A. It just ran out.

Q. It ran out just as you saw that other automobile, or whatever it was? A. It just ran out.

Mr. FALKNOR.—That is all.

(Witness excused.) [162]

**[Testimony of Allen Smith, for Plaintiffs
(Recalled).]**

ALLEN SMITH, recalled as a witness on behalf of plaintiffs for further Cross-examination.

(By Mr. FALKNOR.) Mr. Smith, what are you doing now? A. I am employed by the Sun.

Q. You are employed by the Sun? A. Yes, sir.

Mr. FALKNOR.—That is all.

(Witness excused.)

Mr. HAMMOND.—That is all.

The COURT.—The plaintiff rests?

Mr. HAMMOND.—Yes.

Here the plaintiff rests. [163]

[Testimony of Dr. Park W. Willis, for Defendants.]

Dr. PARK W. WILLIS, produced as a witness on behalf of defendant, being first duly sworn, testifies as follows:

Q. (By Mr. FALKNOR.) State your name?

A. Park W. Willis.

Q. You are the physician of the company?

A. Yes, sir.

Q. And have been for a good many years?

A. Yes.

Q. And as the physician of the company did you call on Mr. Hunt? A. Yes, sir.

Q. Did you examine him? A. Yes.

Q. Tell the jury what, if anything, you found the matter with him, doctor?

A. Well, as far as what I found, I didn't find anything.

Q. Could you find anything the matter?

A. I couldn't find anything.

Q. What did you do, explain to the jury what you did?

A. I asked him about his injury and how he was hurt, and what he did immediately following, and how he felt, and about his pains and when they came on, and what his condition was, and then I examined his body and his general condition as he was lying in bed, just as I would any patient making any complaint.

Q. What was your conclusion from that examination, as to his ailment?

(Testimony of Dr. Park W. Willis.)

A. I didn't believe he was hurt to amount to anything.

Mr. FALKNOR.—That is all. [164]

Cross-examination.

Q. (By Mr. BEVINGTON.) How long after the injury was it that you called upon him?

A. I saw him on September 25th, I think. He was injured on September 23d.

Q. He was in bed? A. He was.

Q. Did he tell you what doctor was treating him?

A. Yes, sir.

Q. Dr. Richardson? A. Yes, sir.

Q. Did he have adhesive bandages on him?

A. Yes, sir.

Q. Do you know what they are usually put on for?

A. Yes.

Q. What?

A. They are put on for various things. Usually when they are put on the side where these were it is on account of pain from which the patient complains.

Q. Pains from which the patient complains?

A. Yes.

Q. It would be natural to put them on if the ligaments of some of the lower ribs were injured or torn, wouldn't it?

A. Yes, sir. They would be put on then. They would be put on for anything that caused any pain when the side was moved, whether it was moved in breaking or anything else. Adhesive plasters on there holds it so that it keeps it from hurting. That

(Testimony of Dr. Park W. Willis.)

is the whole theory.

Q. Did you ever talk to Dr. Richardson about that? [165]

A. I don't know. I think I did, probably, but I don't remember now specifically. I could not tell you definitely.

Q. You never have seen him since? A. No.

Q. You never went back to see him?

A. No. I simply examined him to report to the company the extent of his injuries.

Q. It is your duty to go and examine them?

A. When I am asked to.

Q. And get a statement and turn it in to the company?

A. Make my statement to the company, that is my duty, to make my statement to the company as to the extent of the injuries of the individual.

Redirect Examination.

Q. (By Mr. FALKNOR.) Did you see any indication of pleurisy? A. No.

Q. Did you see any indication of torn ligaments?

A. No.

Q. What would have been the symptoms if either of those things existed?

A. Well, with torn ligaments about the ribs they would probably have been where they would have interfered with his respiration and made his breath short, so that he would have had frequent breathing, and more or less difficulty in breathing, and then, too, if there were torn ligaments he would have been tender in one particular place where those ligaments

(Testimony of Dr. Park W. Willis.)

were. In this case he complained of his tenderness everywhere. I couldn't touch him anywhere that [166] he did not complain of tenderness, and he complained when he moved, and the place where he said he was hurt was down either over the very last floating rib or just below the ribs. It really seemed to me, as near as I could tell, entirely below the ribs, and certainly at the most not more than over the last floating rib, which is a very difficult rib to injure in the way of tearing ligaments or anything of that kind.

Mr. FALKNOR.—That is all.

(Witness excused.) [167]

[Testimony of H. J. Graff, for Defendant.]

H. J. GRAFF, produced as a witness on behalf of defendant, being first duly sworn, testifies as follows:

Q. (By Mr. FALKNOR.) State your name?

A. H. J. Graff.

Q. You were the motorman in charge of the car in question? A. Yes.

Q. How long have you been in the employ of the company?

A. Well, a little over a year here in Seattle. I have been employed about six years altogether with the Stone-Webster Company.

Q. You have had railroad experience for about six years? A. Yes, sir.

Q. Now, you were there, Mr. Graff, I will ask you—you go ahead and tell the jury just how this accident happened.

A. Well, we were going east on Cherry Street, and

(Testimony of H. J. Graff.)

we stopped at 26th Avenue. That was our last stop.

Q. You made a stop at 26th Avenue? That was the street before?

A. Yes. We let off two foreigners there, laborers working on 26th Avenue, which was torn up and closed up to the public there.

Q. On which side of 26th Avenue did you stop, on the west side or east side? A. On the west side.

Q. Now, go ahead.

A. And I pulled out from there, and I had my car speeded up to full speed, and there was not a soul in sight when we come to 27th, not a team. But after I got about ten or fifteen feet of the corner of the apartment house—

Q. That is, the front of your car was ten or fifteen [168] feet from this apartment house?

A. Yes. The automobile come in view. I should say we both saw one another about the same time.

Q. The front of your car was about ten or fifteen feet west of the apartment? A. Yes.

Q. And then the automobile came in view?

A. Yes, he was about thirty feet from the curb.

Q. And the automobile was down here about thirty feet from the curb? A. Yes.

Q. At that time. Now, about what speed was the automobile running?

A. He was running, I should judge, between 25 and 30 miles an hour.

Q. Now, you go ahead?

A. And I got probably about 20 feet past the apartment house, and he passed me, he passed the

(Testimony of H. J. Graff.)

front end of my car, and I thought he was going to make it all right.

Q. What did he do?

A. He turned his car west, and his car skidded from the time I saw him until he struck the street-car. The marks of his skidding stayed on the street for a week afterwards.

Q. He turned to the left?

A. Yes, sir, he turned to the left.

Q. Where did the automobile hit the street-car?

A. It struck it about six feet from the end of the car, that is, excepting the fender. He never touched the front end of the car at all?

Q. Now, when you saw him coming you say you were about ten [169] feet west of this apartment house; what did you do?

A. I threw off my power and set the emergency immediately.

Q. Is that the proper way to stop your car?

A. Yes.

Q. Where did your car come to a stop?

A. It was not quite to the curb on the east side of 27th.

Q. The back end of your car? A. Yes.

Q. The back end of your car was not quite to this curb; which way, from there on, or to the west of it?

A. It cleared 27th Avenue. It didn't quite clear the curb.

Q. That is, the back end of your car cleared 27th?

A. No, it didn't clear it.

Q. Do you mean the paved portion or the side-

(Testimony of H. J. Graff.)

walk? Did it clear the paved portion, the back end of your car? A. I mean the curb on 27th.

Q. It didn't quite clear the curb? A. No, sir.

Q. The front end of your car went on up so that the rear end of your car did not quite clear the curb?

A. No.

Q. What did you do after that?

A. We got off the car right away and we went back and asked them if they were hurt.

Q. You asked the people in the automobile?

A. They said they were not hurt, and Mr. Hunt said he done all he could do. That is the very words.

Q. Did his automobile come to a stop before the impact with your car?

A. No, sir. I passed the car. I thought he was going to [170] make it all right, and then I heard him.

Q. When he made this circuit around here and the car skidded, about what speed was he going at the time the car skidded there?

A. Well, I don't know hardly what speed he was travelling at. His car was skidding. He was traveling at a greater rate of speed than I was.

Q. It was going faster than the street-car?

A. Yes, because he met me quicker than I expected. It was not more than four or five seconds after I saw him until he struck the side of the car.

Q. You are still in the employ of the company?

A. Yes.

Q. About what speed was your car going up that street?

(Testimony of H. J. Graff.)

A. I would judge I was running about fifteen miles.

Q. You were running about fifteen miles?

A. Yes.

Q. Is it level or slightly up grade?

A. It is practically level right there, might be a little up grade.

Cross-examination.

Q. (By Mr. HAMMOND.) It was four or five seconds, you say, after you saw Mr. Hunt before he struck your car? A. Yes.

Q. And you were going at the rate of fifteen miles when you saw him? A. Yes, sir.

Q. You saw him about ten feet— [171]

A. (Interrupting.) It was about ten feet west of the apartment.

Q. West of the east end of the apartment house. How many feet do you think it was? You say ten feet west of the apartment house before you saw him, or when you saw him you were—

A. I was about ten feet, ten or fifteen.

Q. Did you say you were going fifteen miles?

A. I was going somewheres in that neighborhood, fifteen.

Q. Did you ever test that car out to see how quick you could stop?

A. I never tested any street-car out, but the capacity of a common street-car—you can not get any more than 25 miles out of them, and you have to have five or six miles to do that.

Q. How soon can you stop a car, in how many feet

(Testimony of H. J. Graff.)

can you stop a car going at the rate of fifteen miles?

A. That is according to the condition of the rail, it all depends on the rail.

Q. Assuming it is a dry, smooth rail?

A. Well, you couldn't tell whether it was a smooth rail or grease on the rail.

Q. Now, then, you know what the condition was, whether it was a smooth rail. I am not talking about whether this was dry, or grease, or what it was, I am talking about a nice, dry rail with no grease on it. How soon can you stop a car going fifteen miles?

A. You can probably stop in the length of itself.

Q. How long was this car?

A. It is about 38 feet.

Q. You could not stop it sooner than the length of itself? [172]

A. I don't know. I never had no occasion to stop a car that way.

Q. How soon can you stop it going 25 miles, in how many feet could you stop it?

Mr. FALKNOR.—I object. The witness has testified he never made any tests of that kind.

The COURT.—He may answer.

(Exception noted for defendant.)

A. I never had no occasions to stop a car running 25 miles. I don't know—that is, to fetch a car down right away, right immediately with the emergency. I never had that experience yet.

Q. Give us what your experience has been; do you know anything about it at all, as to how soon you can stop a car?

(Testimony of H. J. Graff.)

A. Running 25 miles an hour I would want at least half a block to stop my car.

Q. Then if a car was going 25 miles and you need half a block to stop in, you would go about 300 feet, or about 200 feet before you could stop it, is that right?

A. Well, it would not be necessary. If you had to stop immediately probably you could stop quicker than that, but to fetch your car down for a safety stop for passengers to alight, you would take probably half a block, so you would not jar them and shake them up in making the stop.

Q. But you are just as positive that you were within ten feet of the east side of that apartment house when Hunt came out into the street?

A. That is as near as I can judge. It was ten or fifteen feet.

Q. Where was that located with reference to this—

A. (Interrupting.) He was on the west side of 27th Avenue. [173]

Q. How far down 27th Avenue to the south?

A. To the south?

Q. Yes, how far down 27th to the south, how close was he to Cherry Street when you first saw him?

A. He was probably about two feet from the curb on Cherry Street going north.

Q. Out in Cherry Street? A. Yes.

Q. He was probably two feet north of this line? (Indicating.)

A. He was two feet from the curb.

Q. Two feet from the curb? A. Yes.

(Testimony of H. J. Graff.)

Q. North of the curb out in Cherry Street?

A. West of Cherry Street.

Mr. FALKNOR.—He is speaking of his position on 27th.

A. I mean he was running—

Q. Come down here and show me where he was. Point out on that map where he was about when you first saw him?

A. He was about thirty feet from this curb. (Indicating.)

Q. Which way?

A. From the sidewalk curb, right about in here. (Indicating.)

Q. He was thirty feet back here; the front end or the rear end?

A. The front end. I could see the whole car.

Q. And you saw the whole car when he was thirty feet, right here? A. Yes.

Q. Thirty away from here? A. Yes.

Q. And you were ten feet from here? (Indicating.) A. I was ten or fifteen feet. [174]

Q. Going at the rate of 25 miles, and you want this jury to believe that he ran out there and ran into your car?

A. He was right about in here. (Indicating.)

Q. Where the "C" is marked, that is about where he met you. Now, then, do you want this jury to believe that you saw Hunt's car thirty feet south of Cherry Street on 27th Avenue when you were ten feet west of the apartment house, and that he ran down there and hit your car six feet back of the cen-

(Testimony of H. J. Graff.)

ter, is that what you want this jury to believe?

A. Yes, sir.

Q. Did you go back and pick up that piece of boxing?
A. I picked up a journal cover.

Q. It is what covers that boxing where the wheels are?
A. Yes.

Q. How far did you go back to pick that up?

A. That was lying between the car and the auto.

Q. How far back did you go?

A. I was standing right at the car.

Q. Standing right at the car?

A. Yes, I didn't walk back at all.

Q. What do you mean, the automobile or the street-car?

A. Between the automobile and the street-car.

Q. How far did you have to go before you picked up that journal cover?

A. Well, I picked it up right about in front—it was between the auto and the car. It was lying practically right where they struck.

Q. Now, how far did you have to go back to pick that up?
A. From the front end of the car?

Q. Yes. [175] A. I judge about sixty feet.

Q. Then it laid about thirty feet, twenty-four feet west of the rear end of your car?

A. It was lying between the car and the auto.

Q. I understand, you said that before. I want to get the distance.

A. As near as I can judge it would be somewheres near sixty feet.

(Testimony of H. J. Graff.)

Q. You had to walk back sixty feet to get that journal cover?

A. I didn't walk back to get it. It was lying there when I got ready to go.

Q. How did you get back there?

A. I walked back to see if any of them were hurt.

Q. When you walked back you brought the journal cover back with you, and you walked sixty feet to get it?

Mr. FALKNOR.—He has answered that a half a dozen times.

Mr. HAMMOND.—Let us have him answer it again.

Mr. FALKNOR.—I object to it.

Q. How far beyond the journal cover was the automobile?

A. It was lying practically right by the automobile, between the automobile and the street-car, the rear end of the street-car.

Q. You think it was four or five seconds from the time you saw that automobile until you hit?

A. It was an awful short time.

Q. Four or five seconds?

Mr. FALKNOR.—I object to this. He says an awful short time. Nobody can figure out seconds.

Q. That is what you said it was.

A. I said I could not judge what time it was. It was an awful short time. [176]

Q. You say that after counsel told you, but you said a while ago it was four or five seconds, didn't you? A. Yes.

(Testimony of H. J. Graff.)

Q. That is the fact?

A. It was an awful short time, I know.

Q. Who was it you let off here at 26th Avenue?

A. I let off two laborers working on the streets, 26th Avenue, off the front end of the car.

Q. Didn't you say they were foreigners?

A. Yes, sir.

Q. What street were they working on?

A. On 26th Avenue.

Q. What were they doing there?

A. I don't know what they were doing. They were paving the street at that time.

Q. Did you go back the next day to find them?

A. No, sir, I never went back.

Q. Did they get off at the end of the car?

A. Yes, sir, the front end.

Q. And you are sure they were working on the street there?

A. I think they were. I think they went towards the street.

Q. Are they here in the room now?

A. I couldn't recognize them. I couldn't say whether they are here in the room or not. I never saw them before or since.

Q. You think you were going at least fifteen miles an hour when you reached the apartment house?

A. I don't think I was running over fifteen.

Q. You didn't see any team and horses?

A. I saw a dump-wagon driving up after the accident. [177]

(Testimony of H. J. Graff.)

Q. You didn't see a delivery wagon right here?
(Indicating.)

A. I don't remember a delivery wagon. The track was clear. I didn't see anybody and I didn't get no bell to stop, and I was going on through. There was nobody there to get on.

Q. You knew that was a dangerous corner?

A. Yes, sir, but I was not speeded up and everything was clear. There was practically nothing on the street.

Q. You know, as a matter of fact, that until you get down here (indicating) you can't see ten feet, you can't see five feet beyond that apartment house down 27th Avenue?

Mr. FALKNOR.—I object to that as a matter of argument.

Mr. HAMMOND.—He can tell what he can see. He goes by every day.

Mr. FALKNOR.—It is a matter of argument.

The COURT.—I think the ground has been pretty well covered, but he may answer the question.

Mr. FALKNOR.—Besides, your Honor, under the city ordinance we have the right of way over automobiles and vehicles.

Mr. HAMMOND.—You don't have the right of way over anything.

The COURT.—He may answer the question.

(Exception noted for defendant.)

Q. Can you answer how far beyond this apartment you could see anyone when you are down here at the rear? (Indicating.)

(Testimony of H. J. Graff.) _

A. About ten or fifteen feet, you can see probably thirty feet up on 27th.

Q. Thirty feet down this way? (Indicating.)

A. Yes.

Q. Now then, you can see thirty feet down this way?

A. That will give you, from the car track, that will give you [178] about thirty feet of view.

Q. Thirty feet. I am taking this point right here at the corner of the apartment house, and taking you down here at the entrance to the apartment house. How many feet south of this apartment house could you see anything?

A. How many feet down here? (Indicating.)

Q. Before you could see any object?

A. From where I was I could see—when he first came in sight he was about thirty feet from the curb.

Q. From this curb here? (Indicating.)

A. Yes.

Q. Thirty feet down 27th? A. Yes.

Q. And you were ten feet from—

Mr. FALKNOR.—They have been over that so many times, your Honor.

Q. You were ten feet from 27th Avenue?

A. Somewhere in the neighborhood, ten or fifteen feet.

Q. Where did he commence to skid his tires?

A. From the time I first saw him until he struck the street-car his car skidded.

Q. Thirty feet south of 27th Avenue his car commenced to skid?

(Testimony of H. J. Graff.)

A. Yes. They skidded until they struck me.

Q. And he was skidding right into your car?

A. No, sir. I thought he was going to miss my car.

Q. Was he skidding when he struck your car?

A. I could not tell whether he was skidding or not, but his marks on the street showed it afterwards.

Q. Then you don't want the jury to understand that he was skidding? [179]

A. I couldn't say whether he was skidding or not, but the tire marks—

Q. All you know is that afterwards you saw some tire marks there, is that it? A. Yes.

Q. You don't know whether he was skidding or not?

A. Those tire marks will show whether the wheels were turning around. If they are turning there are no marks.

Q. Certainly there are marks.

A. They are not black marks.

Mr. FALKNOR.—That is a matter of argument, and I object.

The COURT.—Proceed.

Q. You didn't see that the wheels were not turning?

A. I didn't have time to see. I couldn't see whether the wheels were turning or not, no, sir.

Q. You want the jury to believe that it took—he skidded down 27th Avenue thirty—forty—forty-eight feet and hit your street-car six feet back of the front entrance, while you were going ten feet at

(Testimony of H. J. Graff.)

the rate of fifteen miles an hour?

Mr. FALKNOR.—I object to that. That is not fair, because he said he was ten or fifteen feet beyond this apartment house.

Q. All right, while you were going twenty feet, then, is that what you want the jury to believe?

A. Well, it is just as I explained it to you.

Q. As a matter of fact, you didn't see him at all, did you? A. Yes, sir, I saw him.

Q. You didn't see him until you got right up there and was about to hit him?

A. No, sir. He had time to turn, and came very near missing me. [180].

Q. (By Mr. FALKNOR.) How about the sounding of the gong as you came up?

A. I commenced to sound my gong just as I left 26th Avenue, for I was going right through. There was no stop and I never got no bell, and I sounded my gong the whole distance.

Q. (By Mr. HAMMOND.) You say you did sound it? A. Yes, sir.

Q. Now, is it not a fact, Mr. Graff, that after the accident happened you were talking to Mr. Hunt, and Mr. Hunt—is that a fact?

A. No, sir, I didn't talk to him. The "Con" asked him if he was hurt and he said no. He said, "I done all I could do." That is all I talked to Mr. Hunt.

Q. Isn't it a fact that Mr. Hunt said to you, "Why did you run down there at that rate of speed and not try to stop or ring a bell until you hit me?"

A. Mr. Hunt never said anything to me of that kind.

(Testimony of H. J. Graff.)

Q. And you simply said, "I didn't see you."

A. Mr. Hunt never talked to me.

Q. That conversation did not take place?

A. Mr. Hunt never spoke to me. He never talked to me at all on the subject.

Q. And you didn't to him? A. No, sir.

Mr. HAMMOND.—That is all.

(Witness excused.) [181].

[Testimony of J. Boehn, for Defendant.]

J. BOEHN, produced as a witness on behalf of defendant, being first duly sworn, testifies as follows:

Q. (By Mr. FALKNOR.) State your name?

A. J Boehn.

Q. Mr. Boehn, you were a passenger on this car?

A. Yes, sir.

Q. You are here under subpoena? A. Yes, sir.

Q. Where were you riding in the car, Mr. Boehn?

A. Why, I was sitting—

Q. Where were you sitting?

A. I was sitting on the front seat, the long seat. That is, the side seat up towards the front, my daughter and myself.

Q. You were sitting on the side seat on the left-hand or right-hand side as you went out?

A. The left-hand side going out.

Q. You were sitting on the left-hand long seat in the front of the car? A. Yes.

Q. You were facing, then, toward the south?

A. Yes.

Q. You were on the car, Mr. Boehn, at the time of the accident? A. Yes.

(Testimony of J. Boehn.)

Q. And you were facing in the direction from which the automobile came? A. Yes.

Q. Now, at about what speed was the street-car running, Mr. Boehn? [182].

Mr. HAMMOND.—If the Court please, this gentleman has not shown even the slightest qualification.

The COURT.—I think that is right.

Q. (By Mr. FALKNOR.) You ride in automobiles sometimes, do you? A. Yes.

Q. And have observed the speedometers?

A. Yes, sir.

Q. And you have ridden in street-cars and other cars? A. Yes.

Q. Now, I will ask you, Mr. Boehn, at about what speed the street-car was going when you came up to 27th Avenue?

A. Oh, not to exceed over fifteen miles.

Q. Did you see the automobile? A. Yes.

Q. Before it collided with the street-car?

A. Yes.

Q. Where was the automobile, Mr. Boehn, as you sat looking out the window, where was the automobile?

A. It was coming north, I believe you would call it, on 27th Avenue. I believe I saw the automobile before the motorman did.

Q. How far was the motorman away?

A. About 150 feet, probably 200 feet.

Q. What speed was the automobile coming?

A. Well, it was coming, that is, I should say—

(Testimony of J. Boehn.)

Q. As compared with the street-car?

A. It was coming a good deal faster than the street-car.

Q. What happened? Go ahead, you were there?

A. I saw the automobile—my daughter and I both saw it at the same time. She is not here—that don't make any [183] difference—I saw it and turned to look at the motorman, and just as I turned to look at him—that is, my head—he slapped on the brake, and of course I couldn't get up—I didn't get up and look over to see where he hit the car or anything, but I heard the slap.

Q. Where did the impact between the street-car and the automobile appear to you to be?

A. Where did it hit the street-car?

Q. Yes.

A. Right back of the first door on the right-hand side. He hit the second door, the double doors, I could see a mark there.

Q. Did the automobile come to a stop before it hit the street-car? A. I didn't see it.

Q. Was there anything to prevent the man in the automobile from seeing the street-car?

Mr. HAMMOND.—We object.

The COURT.—He may answer whether there was anything or not.

A. I didn't see anything.

Q. You could see the automobile right out the window? A. Yes.

Q. You didn't see anything that was obstructing his vision? A. Nothing at all.

(Testimony of J. Boehn.)

Q. About how far—where do you think you saw the automobile? A. At least 150 to 200 feet.

Q. Now, what was your calling in the past, Mr. Boehn, what has been your calling during your early life? A. My business?

Q. Yes. [184]

A. The last seven years it has been the butter business.

Q. But before that?

A. I have railroaded, and carpenter work.

Q. Have you ever operated an engine?

A. Yes, sir, I used to run an engine.

Q. That gave you a pretty good chance to determine speed, did it not? A. Yes.

Q. What could you say about whether or not the motorman was ringing his gong?

A. He was ringing his gong. I took particular notice of that just before we got there. He was ringing it right along.

Q. Where is your daughter?

A. She is in the hospital.

Q. She was subpoenaed, but is in the hospital?

A. Yes. I have a certificate from the doctor that she could not appear.

Mr. FALKNOR.—That is all.

Cross-examination.

Q. (By Mr. BEVINGTON.) Did you notice whether there was a delivery wagon in front of that apartment house? A. I didn't see none.

Q. You don't know whether there was or not?

A. There was a dump-wagon right ahead of us, a

(Testimony of J. Boehn.)

street-wagon, I guess. That was off of 27th, it was above 27th.

Q. Those seats in that street-car, No. 561, that collided with this automobile, are long seats?

A. I was sitting on the long seat toward the front end. [185]

Q. There are no short seats there?

A. I couldn't say. Not in the front end. It is a long seat.

Q. Isn't it a fact, Mr. Boehn, that that street-car has just two seats in it, one on either side, and they are both just long seats; there are no cross-seats in the street-car?

A. I couldn't swear to that. I know I was sitting on a side seat. That I know.

Q. How far back from the corner of 27th Avenue, the intersection of 27th Avenue and Cherry Street were you when you first saw the automobile coming?

A. I got just kind of on an angle with that apartment house. I believe that is what it is.

Q. Do you know how far back you were, how far were you west of 27th?

A. Can I come down there?

Q. Yes. (Witness steps down to map.) Here is the intersection of 27th and Cherry; here is the apartment house. How far back of this intersection were you?

A. The street-car was in the middle of the road. I was on an angle like this (indicating) and could look over here. He was following—oh, I couldn't say probably four or six feet from this curb here.

Q. At any rate the distance—

(Testimony of J. Boehn.)

A. A distance of 150 feet or more.

Q. The distance between where you were and the automobile was from 150 to 200 feet?

A. It was 150 feet from this street, from the line of this street curb.

Q. Mr. Boehn, in riding upon a street-car running along quite [186] rapidly, as this one was, in an easterly direction, and an automobile coming from the other direction, wouldn't it appear to the casual observer that the object coming towards you was coming faster than it really was? To illustrate, you are going by poles, the poles seem to be moving, especially if you are going by—you are riding and another object is moving by you, it appears to be coming towards you much faster than if you could get a side view of it? You have noticed that?

Mr. FALKNOR.—I object to that. I don't believe it is true.

The COURT.—Let him answer.

(Exception noted for defendant.)

Q. You have observed that in common observation?

A. If you are riding square in front it might, but I was not square in front when I first saw it. I had a side glance, you might say a quarter.

Q. You say that you saw the automobile down there and you turned around?

A. Turned my head.

Q. Turned your head so that you now say to the jury, as you did on direct examination, that you

(Testimony of J. Boehn.)

think you saw the automobile before the motorman did?

A. Well, I thought I did, because as I turned—I saw it coming, and no more than seen it than I turned my head like this (illustrating) and at that time he was slapping on his brakes.

Q. You think you saw it then—

A. I think I saw it as quick as he did, anyway. Of course that is a matter of opinion of mine.

(Witness excused.) [187]

[Testimony of L. J. Ellis, for Defendant.]

L. J. ELLIS, produced as a witness on behalf of defendant, being first duly sworn, testifies as follows:

Q. (By Mr. FALKNOR.) What is your name?

A. L. J. Ellis.

Q. You were a passenger on this car?

A. Yes, sir.

Q. You are here under subpoena? A. Yes, sir.

Q. Where in the car were you riding, Mr. Ellis?

A. I was riding with the conductor.

Q. Back at the rear end?

A. Yes, sir. I' didn't happen to be in the car.

Q. Now, you were there, Mr. Ellis, you tell the jury how you saw this accident?

A. Well, as we were approaching about 27th Avenue I was looking for my number—I was a stranger out there and was afraid I would pass, and so I was looking for my number. That made me observe this car that was coming down 27th. As I saw the car coming down—

Q. Do you mean the car or the auto?

(Testimony of L. J. Ellis.)

A. I mean the automobile. They were in that position when I saw them.

Q. About how far was the automobile away from Cherry Street when you saw it?

A. Well, the nearest I could bring it to the crossing would be thirty feet.

Q. It was down about thirty feet on 27th Avenue when you saw it? A. Yes.

Q. Now, was there anything to prevent the driver from seeing [188] the street-car at that time?

A. Nothing that I saw.

Q. You could see it plainly? A. Yes.

Q. There was nothing between you and the automobile? A. No, because I saw it.

Q. About what speed was the automobile coming?

A. That is hard to determine.

Q. As compared with the street-car?

A. Well, from where the street-car was at that time and where the automobile was it was reasonable for me to suppose that the automobile was coming the fastest.

Q. Did the automobile come to a stop?

A. I never saw it stop.

Q. Where did the collision occur, on what portion of the street-car?

A. Well, I never noticed the street-car to see where it hit the street-car at. I just saw them examine the street-car, but I never went and examined it at all.

Q. Did you have any talk with any of them afterwards?

A. You mean with the automobile people?

(Testimony of L. J. Ellis.)

Q. Yes.

A. I spoke to Mr. Hunt. That was the first time I had ever seen him.

Q. What did he tell you?

A. As soon as the street-car stopped I went right back. I wanted to see who was hurt, and I asked Mr. Hunt, which I guess he will tell you today—I said, “Are you hurt much?” And as well as I could tell it, he says, “Not much” or something to that effect, but he referred me to [189] his automobile.

Q. Did you give Mr. Hunt your name at that time?

A. Yes, sir.

Q. And he has been to see you about being a witness in the case? A. Sir?

Q. You gave Mr. Hunt your name at that time?

A. Yes.

Q. And he afterwards came to see you about being a witness?

A. Well, yes, he came to see me, and I don't remember—he wanted to see, I think, what I found out about it. He didn't say anything about subpoenaing me.

Q. He came to see you about the case?

A. Yes, sir.

Mr. FALKNOR.—That is all.

Cross-examination.

Q. (By Mr. BEVINGTON.) He wanted to see you about what you found out, you say?

A. What I had found?

Q. Yes. You say Mr. Hunt came to see you and

(Testimony of L. J. Ellis.)

wanted to see about what you found out, is that what you said?

A. He just—Mr. Hunt came to see me when I lived at Belmont north, 107½. That was shortly after the accident.

Q. I understood you to say he came to see you about what you had found out?

A. Oh no, not what I had found out. After the thing happened, he never said anything about that.

Q. You were on the back platform? [190]

A. Yes, sir, with the conductor.

Q. Talking with the conductor at the time?

A. No, I was not talking with the conductor at the time.

Q. Now, just about where were you standing on the back end of that platform?

A. I was standing back where you get on, and a little to my right, because I remember having hold so I could watch when I wanted to get off.

Q. The doors were closed?

A. Yes, the doors were closed.

Q. Wooden doors?

A. I don't remember anything about the doors.

Q. Aren't they wooden doors?

A. I won't say they was wooden or anything about them.

Q. The windows are pretty high up and narrow?

A. I don't remember, only I had a perfect view. But I was not interested, I never expected to be in any collision or anything about it, and I was just looking to see where my number was.

(Testimony of L. J. Ellis.)

Q. Was the conductor looking forward?

A. I wasn't watching the conductor. I was watching for my place there.

Q. Were you talking to the conductor?

A. No, sir.

Q. How far from the corner were you when you first saw the automobile?

A. Well, that is hard for me to determine. When I first saw it it was only the distance that I have measured up according to an old farmer's measure, by stepping his steps from the place where the accident happened back so far, [191] over, I will say over, but how much over I could not say, thirty feet.

Q. You are a farmer, you say?

A. I am what you might call a retired farmer.

Q. Have you been out there to look the ground over recently? A. Yes, sir.

Q. Stepped it off recently? A. Yes, sir.

Q. How long after the accident was it that you went out and stepped it off?

A. Last Tuesday afternoon.

Q. After you were subpoenaed? A. Yes, sir.

Q. At whose request?

A. My own request. My own wife never knew I went, nobody but myself.

Q. Prior to that had you had any conversation with Mr. Falknor or the attorneys for the street-car company? A. Yes, I had.

Q. Was there any suggestion that you go out and step it off?

A. No sir. The company afterwards sent me a

(Testimony of L. J. Ellis.)

statement to sign up. He says, "Do you remember this?" I said "Yes, but on that is one mistake."

Q. What was that?

A. My daughter—she had been always used to riding on the Summit—I gave her that and said, "You call them off and ask me the questions, and I will answer the questions." So she called off and said, "How fast was the car going?" I said about twelve miles. She said "I put it down between eight and ten." I told him, I says, "I will [192] correct that, the car was going over ten miles," and he said that was all when he got through, "That is all for you," and that is all he said. But he never knew that I had any idea of going out there, but when you and Mr. Hunt came to see me and pinned me down so tight in regard to these distances I thought I had better go out and get the best idea I could.

Q. After we pinned you down to distances then you went out and stepped it off?

A. I wanted to be sure. You remember you pressed me, you wanted to put it at one hundred, so I thought I would step that so if the Court asked me I would not say "I suppose." As I told you I may vary a little in the three feet, but I stepped it. Then I stepped from the car track to the apartment house to see how far that was, and then I stepped it from where the thing happened up Cherry Street as near as I could where I saw the automobile, and then I put a little flag there and went back down here to see how far I was down west when I could see the car. But from 27th Avenue across to the apartment house,

(Testimony of L. J. Ellis.)

I didn't step that. I would have done it but I forgot it.

Q. Now, Mr. Ellis, have you had much experience in determining how fast a street-car was going prior to this injury?

A. I will tell you all the experience I have had if you will give me a chance.

Q. Answer the question?

A. Yes sir, I have had experience.

Q. Prior, I mean before the accident, had you had much experience. A. I had some. [193]

Q. Haven't you since repeatedly rode along with street-car conductors and asked them how fast they were going? A. I have.

Q. You have done that on the Renton line?

A. I did that this morning when I was coming in.

Q. You have done that nearly every day?

A. Not every day. I don't come every day. Frequently. I don't always.

Q. How long have you been doing that?

A. I have been doing that ever since about the first of April, 1912.

Q. Ever since the first of April, 1912?

A. Off and on. I don't make it always a practice because the conductors would get tired of it.

Q. You have been doing that since the accident?

A. Before. I was getting speed ideas. I had ridden on some automobiles in Kansas City, and street-cars, and horses in Richmond, Virginia. I had heard so much about different speeds that I very often said, "How fast are you going?"

(Testimony of L. J. Ellis.)

Q. Have you ridden much in automobiles?

A. I rode some in Kansas City, and I rode some in Iowa and Kansas, and some in Seattle.

Q. Very much? A. No, not very much.

Q. Did you ever have any accident in an automobile? A. No, sir.

Q. Did an automobile ever run into your team when you were farming?

A. No, sir, none I was in. [194]

Q. Aren't you a little prejudiced against automobiles?

A. No. I have no prejudice in my heart against an automobile. Sometimes I have been driving and found that the automobiles, while people were damning them,—seeing them trying to dodge people, I thought they was a little hard on the automobiles.

Q. (By Mr. FALKNOR.) About what speed was this street-car going along there at the time?

A. Now, I could explain to you what I am going to tell you. I tell you that I was thinking the street-car was going about twelve miles, and I could explain why I put it at that.

Mr. FALKNOR.—That is all.

(Witness excused.) [195]

[Testimony of Stephen Enos, for Defendant.]

STEPHEN ENOS, produced as a witness on behalf of Defendant, having first duly affirmed, testifies as follows:

Q. (By Mr. FALKNOR.) What is your name?

A. Enos Stephen.

Q. Were you in the vicinity of this accident at the

(Testimony of Stephen Enos.)

time of this accident? A. I was.

Q. What were you doing?

A. I am a street cleaner.

Q. On what street were you working, Mr. Enos?

A. On 27th Avenue.

Q. You were working on 27th Avenue?

A. Going towards Cherry Street.

Q. You were working on 27th Avenue towards Cherry, in the block just south of Cherry?

A. Just about, I guess about 250 feet.

Q. South of Cherry? A. South of Cherry.

Q. Did you see this automobile before the accident? A. I did, sir.

Q. About what speed would you say it was running when it went by you?

Mr. HAMMOND.—If the court please——

Mr. FALKNOR.—Let him tell in his own way.

Mr. HAMMOND.—This witness is not qualified.

(Question repeated to the Court.)

The COURT.—Objection sustained.

Q. Have you ridden in automobiles, Mr. Enos?

A. I have. [196]

Q. And have observed the speedometers?

A. Well, no, I haven't gone that far on that question.

Q. When you have ridden in automobiles did you know about how fast they were running?

A. Well, now, you want to know particularly on this occasion?

Q. No. I want to know if you know, if you at other times and on other occasions, Mr. Enos, ob-

(Testimony of Stephen Enos.)

served the speed of automobiles and street cars and vehicles, and things like that?

A. Well, according to my honest understanding on this case, I want to state, if you will allow me—

The COURT.—What he wants to know is whether you have seen enough operating of automobiles—

A. I have, sir.

The COURT.—(Continuing.) and observed the speed to know how fast they go; when you see one if you have any idea how fast they are going?

A. I would like to tell, but you won't let me.

The COURT.—But do you know?

A. I do know, certainly; if you will allow me to tell you.

Q. (By Mr. FALKNOR.) Now, Mr. Enos—

Mr. HAMMOND.—(Interrupting.) Just a minute. I put in an objection.

The COURT.—Wait, Mr. Hammond. This is already disposed of. There is nothing before the Court. You want to know first whether he knows. (Addressing witness.) I want to know whether you have seen the operation of automobiles and street-cars with relation to speed sufficient to be able to tell this jury. A. Yes. [197]

The COURT.—About how fast an automobile runs, when you see it run?

A. I presume I can if you will allow me to.

The COURT.—I am not asking you how fast this automobile was going, but any automobile. Have you seen them? A. Some goes faster than others.

The COURT.—Are you able to say how fast they

(Testimony of Stephen Enos.)

go when you see them, how many miles an hour?

A. I guess I can. In this case, anyway.

The COURT.—I want to know about some other cases besides this one.

A. I understand I am in this case to testify what I know.

Q. (By Mr. FALKNOR.) I will ask you this; was this automobile going slowly or fast?

A. It was going fast.

Q. Now, Mr. Enos, did you observe the street-car and the automobile after the accident?

A. I heard it strike, and I looked, and I saw they was both standing still, the automobile and the street-car.

Q. Now, about where was the rear end of the street-car?

A. About 27th Avenue, going east on the east side of the curb, on 27th Avenue.

Q. Come down here and show us about where the rear of the street-car was. (Witness steps down to map.) This is 27th Avenue, and this is East Cherry, and this is looking north. About where was the rear end of the street-car?

A. Here is the curb here. Well, the street-car, the rear end of the street-car, was about here. (Indicating.)

Q. About opposite the sidewalk? [198]

A. Yes.

Q. It was standing still?

A. It was standing still.

Q. Did you go up there after the accident?

(Testimony of Stephen Enos.)

A. I did.

Q. Did you have any talk with these men?

A. When I come there there was a few men there, and I asked if anyone was hurt, and the reply was made no.

Q. Were these men present?

Mr. HAMMOND.—We object to this man telling any conversation he had with somebody else unless it was Mr. Hunt, the plaintiff in this case.

The COURT.—Objection sustained.

(Exception noted for defendant.)

Q. Was the automobile there at the time?

A. Yes.

Q. Do you know whether these men were in the vicinity of where this conversation took place, or do you know that?

A. I know there were a few men around the automobile, and I stood there a few minutes, and then I went back where I came from.

Mr. HAMMOND.—We move to have stricken any conversation that he heard there.

Mr. FALKNOR.—I think the presumption would be that they were there.

The COURT.—The Court cannot indulge in presumptions. The motion is granted.

(Exception noted for defendant.)

Q. You didn't see them come together, did you?

A. No. [199]

A. You just heard the impact?

A. I heard a crack, and I looked up and saw both

(Testimony of L. J. Ellis.)

of them standing still, the automobile and the street-car.

Mr. FALKNOR.—That is all.

Cross-examination.

Q. (By Mr HAMMOND.) You have not talked this over with anyone, have you?

A. Talked it over, no.

Q. You haven't talked with anybody about this case, what you were going to testify, have you?

A. Yes.

Q. Who did you talk to?

A. I talked to the gentlemen that stood there at the automobile, and I asked them if anyone was hurt.

Q. Never mind about that conversation. Outside of these two men you haven't talked to anybody?

A. No.

Mr. FALKNOR.—Just a minute; I never put a witness on the stand without asking what he is going to testify to, and neither did counsel yesterday, so I object to the question as impertinent.

Mr. HAMMOND.—That is all.

(Witness excused.)

(Whereupon the Court takes a recess until two o'clock P. M.) [200]

Afternoon Session, Friday, September 25, 1914.
Continuation of proceedings pursuant to adjournment. All parties present as at former hearing.

[Testimony of C. A. Holloway, for Defendant.]

C. A. HOLLOWAY, produced as a witness on behalf of defendant, being first duly sworn, testifies as follows:

Q. (By Mr. FALKNOR.) State your name.

A. C. A. Holloway.

Q. You live in the city? A. Yes, sir.

Q. What is your business? A. Real estate.

Q. You are here under subpoena served on you by the marshall? A. Yes.

Q. Were you on this car? A. Yes, sir.

Q. Where were you riding in the car?

A. About the center, in the center of the car over on the left-hand side.

Q. You were riding on the north side of the car, were you? A. Yes.

Q. Now, I will ask you if you saw the automobile before the collision with the street-car?

A. Yes, sir.

Q. I will ask you if you saw it down on 27th Avenue? A. Yes.

Q. Before it got out into Cherry? A. Yes.

Q. What speed was it coming? [201]

Mr. HAMMOND.—Just a minute; the witness is not qualified.

The COURT.—Objection sustained.

Q. Have you ridden in automobiles? A. Yes.

Q. And observed the speedometers? A. Yes.

Q. And in street-cars? A. Yes.

Q. And can approximate the speed?

Mr. HAMMOND.—That is a matter of opinion.

(Testimony of C. A. Holloway.)

Let him tell what he did.

The COURT.—He can answer.

Q. You observed when you rode in automobiles the speedometer, and how fast the autos were going?

A. Yes.

Q. I will ask you, Mr. Holloway, from this observation, from observing the speedometer of automobiles, and speed at other instances, if you can approximate the speed of that automobile?

A. I think between ten and fifteen miles.

Q. The automobile? A. Yes.

Q. Now, you go ahead and tell what happened?

A. Well, as I say, I was sitting there, and I was thinking about the thing that happened. I was sitting looking at the motorman, and, of course, seeing the apartment house ahead it just occurred to me that there would be a good place for an accident.

Q. Was the gong being sounded on the street-car?

A. I was going to tell you. Just as we came up to the west [202] end of the apartment-house, why the motorman started ringing his bell, one of these rotaries, whatever you call them. So I was looking directly at him, watching him at that time, and I saw him make a move, I suppose to turn off the power. He did something with his hands before ever I saw the automobile, and as he did that, why I looked up, of course, and the automobile was coming.

Q. Was it on 27th Avenue when you first saw it?

A. Yes.

Q. It had not got on Cherry Street? A. No.

(Testimony of C. A. Holloway.)

Q. Was there anything to prevent the driver of the automobile from seeing the street-car?

A. I saw nothing in the street.

Q. There was nothing that obstructed your view?

A. No, I didn't see a thing outside of the automobile.

Mr. FALKNOR.—That is all.

Cross-examination.

Q. (By Mr. HAMMOND.) When you saw the motorman commence to turn that wheel you were at the west end of the apartment-house, were you?

A. When he did that?

Q. Yes.

A. No, sir. No, we were pretty well, as near as I can remember, about thirty, twenty or thirty feet back from the east end of the apartment.

Q. When he first commenced to put off the power?

A. Yes. [203]

Q. Where was Mr. Hunt and the automobile?

A. It looked to me like he was about the same distance.

Q. From the tracks?

A. Yes, sir, from Cherry Street.

Q. Do you mean the same distance from Cherry Street or the same distance from the tracks?

A. Well, he was about the—I tell you it looked to me from where I was sitting like they were both running about the same speed and got at this point about the same time.

Q. What I asked you was, about where was Mr. Hunt when the street-car was thirty feet, about

(Testimony of C. A. Holloway.)

thirty feet west of 27th Avenue?

A. I would judge Mr. Hunt was about the same distance south of Cherry Street.

Q. You mean on 27th? A. On 27th, yes, sir.

Q. Then you think Mr. Hunt was about thirty feet south of the apartment-house when you were thirty feet west of 27th?

A. I think that Mr. Hunt was as near the center of the street where the accident took place as the street-car was, yes, sir.

Q. Then you are getting Mr. Hunt up towards Cherry Street further. I want to locate Mr. Hunt. This street here is from the car track to the curb eighteen feet, I think it is, sixteen feet. Now, do you want Mr. Hunt thirty feet down here? (Indicating.)

A. I told you what I think. The way I could see it, I believe that Mr. Hunt was as far on this street from, we will [204] say this point along about here—

Q. That is not what I asked you.

A. What did you ask me?

Q. I asked you to point to the place where Mr. Hunt was?

A. I could not tell you exactly. I told you that I thought he was between twenty-five and thirty feet from Cherry Street.

Q. Now then, you have him twenty-five or thirty feet down this way from this line here? (Indicating.)

A. That is the idea.

Q. And you were about twenty-five or thirty feet

(Testimony of C. A. Holloway.)

down this way from this line?

A. In the neighborhood of that, yes.

Q. That was the first time you saw him?

A. Yes, that was the first time I saw him.

Q. Where was the conductor or motorman? The motorman was fifteen feet ahead of you.

A. Don't understand me that way. I was sitting—I meant from the front end of the street-car.

Q. How do you know where the front end of the street-car was?

A. I am giving it to you just as I saw it. I didn't measure the distances.

Q. The motorman was fifteen or twenty feet ahead of you? A. Yes.

Q. When you saw the automobile it was about twenty-five feet from this line here, you said? (Indicating.) A. Well, yes.

Q. Now then, the motorman would be fifteen feet ahead of you, wouldn't he?

A. I did not refer to the drivers of either. I had reference [205] to both the street-car and the automobile.

Q. But the motorman was fifteen or twenty feet ahead of you, wasn't he? A. Yes.

Q. That would take him up here so that he could see the automobile further down than you could, if he had been looking.

A. Sure, he could see it quicker than I did.

Q. You saw it twenty-five feet from Cherry Street—when you and the street-car were about twenty-five feet from 27th Avenue, that is right, isn't it; you

(Testimony of C. A. Holloway.)

saw the automobile twenty-five feet from Cherry Street? A. Yes.

Q. At the same time the street-car was about twenty-five feet from 27th Avenue?

A. The front end of the street-car, I judge about that distance.

Q. Then the motorman could have seen him seventy-five or one hundred feet down here?

A. Why, I don't know.

Q. Where was the motorman when he commenced to turn off his power?

A. Well, sir, I couldn't tell you.

Q. Where were you? A. In the car.

Q. Whereabouts?

A. Let's see; this is the street-car, this desk (referring to jury-box rail); I was sitting about in this position here. (Indicating.)

Q. About half way, a little further this way than the other? [206]

A. I was sitting pretty well the center, as well as I remember. I was looking directly at the motorman, and as we came along, just as we came up to this apartment-house, he started ringing the bell. I was sitting there watching him and saw him. I was still looking at him and I saw him make a move of some kind.

Q. Where were you? A. I was sitting there.

Q. I mean where was the street-car with reference to the apartment-house.

A. I tell you the street-car was practically twenty-five or thirty feet from Cherry Street.

(Testimony of C. A. Holloway.)

Q. When he commenced to stop?

A. From this line here. (Indicating.)

Q. When he commenced to stop?

A. When he threw—

Q. (Interrupting.) He didn't commence to do it before that? A. Well, that is the way I saw it.

Q. Now, you say that while you were sitting there you were thinking about this very same thing that might happen?

A. It is peculiar, but I was, yes, sir.

Q. Was that caused by the rapidity with which the car was going? A. No.

Q. And the dangerous point there?

A. No. I will tell you; when I am in a street-car, or in an automobile, I should have said, and we are approaching a street-car line or even any other street, why I am always kind of looking out for these things.

Q. You figured that was a dangerous place? [207]

A. Not necessarily, only I figured that an apartment house like that was would be a good place for an accident.

Q. They are dangerous places?

A. Yes, in a way that is a fact.

Q. It would be just as hard for the motorman to see the approaching automobile as it was for the driver of the automobile to see the approaching street-car; in fact, would it not be harder for the automobile man who sits nine feet back of the front end of his car, wouldn't it be harder for him to see a street-car than for the motorman to see him?

(Testimony of C. A. Holloway.)

Mr. FALKNOR.—I object to that as a matter of argument.

The COURT.—Let him answer. The jury knows as much about that as he does.

(Exception noted for defendant.)

A. Really, I don't know.

Q. You say you don't know?

A. No, because I never drove a street-car or an automobile.

Q. You were sitting on the left-hand side of the car? A. Yes.

Q. How wide was the car? A. I don't know.

Q. Well, you can guess at it; you know about how wide that car was; how far were you from the other side of the car, the south side of the car?

A. If you will tell me how wide the car is I will tell you. I will have to guess at it. It might be four feet, or six, or eight, I really don't know.

Q. You know it is not eight feet, don't you, you are able to judge the distance. [208]

A. Well, possibly six feet across, from the outside to the outside.

Q. When you are sitting in that street car you are about on the level with the other side of the car, are you not? A. Yes.

Q. So that you have to look over this—the east side of the car, the south side of the street-car, and on beyond that to get a look at the automobile?

A. Had to do what?

Q. Had to look over the south side of the street-car? A. No, I was looking directly in front.

(Testimony of C. A. Holloway.)

Q. (By Mr. FALKNOR.) The motorman began to ring his gong when he was at the west side of this apartment house?

A. He commenced ringing his bell when we came up opposite the apartment house.

Q. One of these rotaries? A. Yes, sir.

Q. Repeaters? A. Yes.

Mr. FALKNOR.—That is all.

(Witness excused.) [209]

[Testimony of Everett Browning, for Defendant.]

EVERETT BROWNING, produced as a witness on behalf of defendant, being first duly sworn, testifies as follows:

Q. (By Mr. FALKNOR.) State your name?

A. Everett Browning.

Q. You were the conductor on this car?

A. Yes.

Q. You were in charge of the car? A. Yes.

Q. Tell the jury what you know about this accident? A. As we were approaching 27th—

Q. What about 26th, did you make a stop there?

A. Yes, we made a stop at 26th.

Q. On the west side?

A. Yes, sir, on the west side of 26th. As we were approaching 27th, I should judge at the rate of fifteen—I put the speed a little higher than some of the others—fifteen or more—not very much more, however—I believe in the report we made we put it fifteen, and I claimed perhaps it might be a little over fifteen, but not very much over fifteen—as we approached 27th my first intimation of anything wrong

(Testimony of Everett Browning.)

was the sudden slowing up of the car, and I got to the side door, the best place I could see, back far enough—I could see through the windows some—I got over to the side where I could see better. I was, of course, not the same place as one old gentleman here—I was in the conductor's place next to the body of the car. There is a division between the entrance and the exit, and I was closer to the exit than to the entrance. They come in the back part, and I [210] was closer to the front part. I looked out the rear window—these cars are open, the vestibule and the body of the car are almost the same thing, they are practically the same thing. They have doors on them with closed panels. I looked through the rear window, and when I first saw the automobile on 27th it was—well, it had started into Cherry Street. It was then almost to the car. I didn't see the automobile until we had come—well, it was two or three seconds before the collision that I saw it. In regard to where it struck the car I could not, of course, from where I was seeing the contact, could not see the point of contact, but on examination of the car the first scratches I saw on the car anywhere were on the last half of the door, the half of the door toward the body of the car, back of the bumper and fender. And in regard to—

Q. Just a minute. You had car No. 361?

A. Yes, sir.

Q. Is that a picture of the car taken the next day, or the same day? (Hands photograph to witness.)

A. Yes, sir.

(Testimony of Everett Browning.)

Mr. HAMMOND.—We object to the witness testifying when it was taken unless he knows.

Mr. FALKNOR.—Well, I asked him.

The COURT.—Proceed.

Q. Does that show the scars on the car?

A. There was a scratch on this door somewhere, I think back in here somewhere. (Indicating.)

Mr. FALKNOR.—I offer this in evidence, Your Honor.

The COURT.—Admitted. [211]

(Photograph received in evidence and marked “Defendant’s Exhibit A.”)

A. (Continuing.) Here is the scratch right in here, and then going back—the last half of the front door—going back to this box here, the covering was knocked off here. I believe this casting was knocked off. I knew the two rear castings were knocked off, and it must have sprung a little away from the car then, I don’t know to what extent. It is scratched clear back to here, knocking the casting off on the rear wheel.

Q. Where was the first mark on the side of the car?

A. The last half of this door. (Indicating.)

Q. There were no marks near the front end of the car?

A. I didn’t see any, and I examined the car. There was nothing to indicate it had touched the car beyond that part.

Q. Now, how about the ringing of the gong along there, did you notice that?

A. I did not. That is one thing that I did not

(Testimony of Everett Browning.)

notice at all. I know they usually ring the gong, but I couldn't swear. I want to tell just what I know, and I couldn't swear whether or not the gong was touched at all. I have no recollection of that.

Q. Did you have a talk with these people afterwards, Mr. Browning?

A. I did, but I can't recall the conversation, and would not want to attempt to say what it was.

Q. Did you ask them if they were injured—I will ask you that, did you make any inquiry as to whether they were injured?

A. I could not positively say what I said, but I must have [212] made an inquiry, because that is one of the first things that a conductor is supposed to do in case of an accident.

Q. When you made out your report you said nothing about any injuries to the parties?

A. I did not.

Mr. HAMMOND.—We object to that.

Mr. FALKNOR.—I want to show that he evidently must have done that.

Mr. HAMMOND.—It has been over a year since it happened. We move that it be stricken, this evidence as to what the report was that he made to the company.

The COURT.—Yes; whatever report was made, that will be stricken, and the jury is instructed to disregard that testimony.

Mr. FALKNOR.—It was not made. That is all.

Mr. HAMMOND.—That is all.

(Witness excused.) [213]

[Testimony of Robert Atkinson for Defendant.]

ROBERT ATKINSON, produced as a witness on behalf of defendant, being first duly sworn, testifies as follows:

Q. (By Mr. FALKNOR.) State your name?

A. Robert Atkinson.

Q. Mr. Atkinson, what was your business last year?

A. Automobile business.

Q. What car were you selling?

A. The Hudson.

Q. You had the agency of the Hudson car?

A. I was manager of the agency, yes, sir.

Q. I will ask you if your branch agency made the contract with Mr. Hunt?

A. Yes, sir.

Q. Mr. Atkinson, do you remember the instance of this car, the one you had sold to him under contract, becoming involved in a street-car collision out at 27th and Cherry?

A. Yes, sir.

Q. I will ask you if after the accident you went out to get the car?

A. Yes, sir.

Q. And if you helped to bring it in?

A. Yes.

Q. I will ask you if you looked on the street and observed whether the car had done any skidding?

A. I went over to see where the car had turned into Cherry Street.

Q. Tell the jury what you observed as to skidding?

A. I would not call it skidding. Skidding in the automobile sense of the word is sliding sideways. [214] The marks on the pavement that I saw looked as though the wheel, or wheels, had been locked with the brake and had slid, discoloring the pave-

(Testimony of Robert Atkinson.)

ment, making a dark mark.

Q. About how far had the wheels been locked and slid? A. Twelve to fifteen feet.

Q. You were familiar with this car, of course?

A. Yes, with this make of car. Not that particular car, but that make of car.

Q. You sold the car? A. Yes.

Q. I will ask you, in your opinion, about how fast that car must have been going to have had its wheels locked and slid that distance at the time?

Mr. BEVINGTON.—We object to that question in the form in which it is put, not stating the facts. It is assumed that it was skidding and the witness said it was not.

The COURT.—He may answer.

A. I would say the car was going in the neighborhood of twenty-five miles an hour to have made the mark on the pavement that was made. That would be my judgment.

Q. Now, how quickly could this car be stopped going at the rate of eight miles per hour?

A. Four or five feet if the brakes were working properly.

Q. Now, you saw Mr. Hunt, of course, during the negotiations for the sale of this car?

A. Yes, sir. I didn't sell him the car, but one of my salesmen did sell it to him, and of course I was brought into consultation.

Q. And you had seen him after he bought the car and was driving it? [215] A. Yes.

Q. And you have seen him since, and see him to-

(Testimony of Robert Atkinson.)

day? A. Yes, a few times.

Q. How does his appearance today compare with what it was when you first saw him, Mr. Atkinson?

A. Do you mean his facial expression?

Q. Yes.

A. In general appearance there is very little chance, to my notion. Of course not being intimate with him or seeing him frequently, perhaps my judgment would not be as good as others' who had seen him more often, but looking at him sitting over there today and sitting in my office at different times I would say he was very much of the same general appearance.

Q. After this accident you took the car into your place of business? A. Yes, sir.

Q. You people made the repairs, did you?

A. Yes.

Q. You people paid for them? A. Yes.

Q. Did he ever get the car after that?

A. No, sir.

Q. You had possession of the car at all times afterwards? A. Yes.

Q. And sold it to somebody else? A. Yes.

Cross-examination.

Q. (By Mr. BEVINGTON.) Mr. Atkinson, you were phoned to and [216] came out after the automobile? A. Yes.

Q. You say that you were the manager of the Pacific Car Company at the time the machine was sold to Mr. Hunt? A. Yes, sir.

Q. You wrote him some letters regarding the ex-

(Testimony of Robert Atkinson.)

tension of time for making payments, did you not?

A. I don't recall all the circumstances, but I think I do remember that he asked for an extension of time.

Q. You wrote him regarding an extension of time, didn't you?

A. I don't remember. Those transactions, of course, are—you don't carry them around in your mind. A great many of those kind of transactions will be in one's mind in the course of a year.

Q. You took the car back to the company's garage?

A. Yes, sir.

Q. At his request, for repairs? A. Yes sir.

Q. And charged, and you sent the bill for the repairs to him, didn't you? A. Yes, sir.

Q. And continued to send the bills until about April 5th, following when you wrote him sending him the cancelled note?

A. Yes. The cancellation of the note, and the sending of the note was not done by me, but by the Pacific Car Company.

Q. But you continued sending him bills and seeing him in reference to the payment of the charges against the car up until April 5 following, when the notes were cancelled?

A. I won't say I saw him continuously up to that time. I [217] don't recollect seeing Mr. Hunt or having any talk with him about the payment of that bill much after the first of the year. We moved into a new place on the first of the year, and I think Mr. Hunt called once, and that was possibly in the month of January or February, and the car was still in our

(Testimony of Robert Atkinson.)

possession at that time.

Q. But it was in your possession, Mr. Atkinson, for the purpose of repairs at his request? You had not forfeited the contract?

A. Yes, he had forfeited the contract.

Q. I say you had not forfeited the contract?

A. Oh, to him?

Q. Yes. A. No, we had not returned it.

Q. And it was your hope—you wrote him and talked with him? A. Yes.

Q. In the hope that he would be able to pay the repair bill and the next payment that was due?

A. Yes.

Q. And you gave him up until the car was finally sold, a few days before it was sold, to pay that repair bill and make his next payment under his contract?

A. I wrote him about it. I was doing it for his good as well as our own.

Q. You wrote him—I will hand you a letter here and ask you—August 4, 1913—and ask you if that is not your signature over the word “manager”?

A. Yes, sir, that is my signature.

Q. You sent that to Mr. Hunt, didn't you?

A. Yes. [218]

Q. In regard to the extension of payments?

A. I said we would give him—

Q. You sent that to him? A. Yes.

Mr. BEVINGTON.—I will have it marked Exhibit No. 5 for identification.

(Document marked “Plaintiffs’ Exhibit No. 5 for identification.”)

(Testimony of Robert Atkinson.)

Mr. BEVINGTON.—We offer it in evidence.

Mr. FALKNOR.—I object as incompetent and immaterial, a collateral matter, wholly immaterial.

The COURT.—Overruled. Admitted. Exception.

(Exception noted for defendant.)

(Document received in evidence and marked "Plaintiffs' Exhibit No. 5.")

(Whereupon Mr. Bevington reads Exhibit No. 5 to the jury.)

Q. Now, Mr. Atkinson, after writing that letter—you say that the car was taken back at Mr. Hunt's request, to be repaired for Mr. and Mrs. Hunt, wasn't it? A. Yes, sir.

Q. And on October 17, did you send him the two bills—I will have them marked Exhibits Nos. 6 and 7.

(Documents marked "Plaintiff's Exhibits Nos. 6 and 7 for identification.")

A. This is the work of the book-keeper.

Q. That is, No. 6 is the work of the book-keeper?

A. Yes.

Q. It was sent from the Pacific Car Company?

A. Yes. Yes. [219]

Q. No. 7, whose work is that?

A. That is the handwriting of the bookkeeper.

Q. You know the handwriting? A. Yes.

Q. That was sent to him? A. Yes, sir.

Q. October 17, both of them. The one, Exhibit No. 6, includes items that you had actually put on the machine, does it not, that is, the Pacific Car Company put on; and the other includes, No. 7 includes two

(Testimony of Robert Atkinson.)

tires, making the total bill—

A. (Interrupting.) Wait a minute here; those amounts, those latter amounts are not in his handwriting, these two tires and two rims and one cover.

Q. The two tires were damaged?

A. Yes, I presume they were. I don't remember distinctly about them.

Q. What is the value of the tires?

A. They are worth about, oh, I should judge—with inner tube you mean, the whole thing?

Q. Yes.

A. About \$45 apiece.

Q. As indicated on that bill? A. Yes.

Q. So that the total repairs to that car was as shown by the aggregate of these two bills—

A. \$529.73. No, that is not exactly the case, Mr. Bevington.

Q. What is to be taken away from the \$529, that is all we had.

A. Well, the amount due October 1st of \$72.63, as I recollect it now, was a bill, an invoice that we made prior to the [220] time of this accident.

Q. Tell the jury what were the proper charges for repairs on that car on account of these injuries?

A. The \$529.73 with the \$72.63 deducted would be about the amount, about \$457.

Mr. BEVINGTON.—I will have this letter marked Exhibit 8 and this one Exhibit 9. We will offer in evidence Exhibits Nos. 6 and 7.

(Documents marked "Plaintiffs' Exhibits Nos. 8 and 9 for identification.)

(Testimony of Robert Atkinson.)

Mr. FALKNOR.—I object to them as immaterial.

The COURT.—The object to that one is sustained, that one on which items appear that do not belong there.

Mr. BEVINGTON.—He made the deduction.

The COURT.—The jury will have the testimony. The objection to that is sustained, Exhibit No. 7.

Mr. BEVINGTON.—Note an exception.

(Plaintiffs' Exhibit No. 6 for identification received in evidence and marked "Plaintiffs' Exhibit No. 6.")

Q. Is the letter, Exhibit No. 8, one that you wrote, is that your signature there? A. Yes, sir.

Q. That was with reference to this same car?

A. Yes.

Q. That was written November 20?

A. Yes, sir.

Mr. BEVINGTON.—We offer Exhibit No. 8 in evidence.

Mr. FALKNOR.—Objected to as immaterial.

The COURT.—It will be admitted.

(Plaintiffs' Exhibit No. 8 for identification received in evidence and marked "Plaintiffs' Exhibit No. 8.") [221].

(Exception noted for defendant.)

(Whereupon Mr. Bevington reads Exhibit No. 8 to the jury.)

Q. Now, did Mr. Hunt see you after you wrote that letter? A. Yes, sir.

Q. And you had further oral negotiations with him

(Testimony of Robert Atkinson.)

in reference to further time to make that payment for repairs?

A. Yes, he said that he would try and raise \$700, as I remember it.

Q. You still did not forfeit the contract?

A. No, but I told him I would do what I could to extend the time for him if he could raise some money.

Q. Now, Exhibit No. 9 is another letter in your handwriting, isn't it, with reference to the same matter? A. Yes, sir.

Mr. BEVINGTON.—We offer it in evidence.

Mr. FALKNOR.—I object to it as irrelevant and immaterial.

The COURT.—It will be admitted.

(Plaintiffs' Exhibit No. 9 for identification received in evidence and marked "Plaintiffs' Exhibit No. 9.")

(Whereupon Mr. Bevington reads Exhibit No. 9 to the jury.)

(Exception noted for defendant.)

Q. Now, that was the letter and the instrument by which the contract, Plaintiff's Exhibit No. 3, was cancelled, was it not?

A. Prior to that letter is the conversation that I spoke about a few minutes ago. As I recall it Mr. Hunt came into our place of business and I talked the matter over with him. He said that certain arrangements that he [222] had been trying to make to raise this money had fallen down, and that he was afraid he was not going to be able to raise the money, and I then said, "Mr. Hunt, you can see very readily

(Testimony of Robert Atkinson.)

our position in this matter. We can not string this along indefinitely this way, and if you are in a position where you can not go any further we have got to take some action." He said, "Yes, that is true." We talked the matter over *pro* and *con*, and this letter, I think, was the result of that conversation. This was the duplicate original contract. (Referring to Plaintiffs' Exhibit No. 3.)

Q. Mr. Atkinson, this bill to repairs was never charged to anybody else, was it, than to Mr. and Mrs. Hunt?

A. No, unless it was charged to an account that we carry offsetting kind of expenses like this to some other account in our books. For instance, it would be charged to "Hudson maintenance."

Q. It never has been paid?

A. No, sir, not directly. It was paid indirectly, of course, in the sale of the car.

Q. What I mean is, that bill still stands as a charge against the Hunts?

A. No, we charged all those accounts off. We charge those off after a certain length of time, and clean the books that way.

Q. Under this contract, Exhibit No. 3, and your arrangements with him, made from time to time, orally and by letter, the Hunts had the use of the car up until the time the contract was forfeited and the car sold to Mr. Wood?

Mr. FALKNOR.—Just a minute; the contract speaks for itself. [223]

The COURT.—He may answer.

(Testimony of Robert Atkinson.)

(Exception noted for defendant.)

A. I didn't get the question exactly, Mr. Bevington.

Q. Under the terms of this contract, Plaintiff's Exhibit No. 3, and the arrangements in connection with the contract that you had with Mr. Hunt by letter and orally, Mr. and Mrs. Hunt had the use of that car up until the time of the forfeiture?

A. Which was the time of the accident, you mean?

Q. No, up until the time of the forfeiture. They had the use of that car if they could pay the bill and had paid it, it was their's to use under the terms of the contract?

A. If they had paid their sundry account we arranged to let them have the car, but of course the non-payment of that sundry account stopped the whole proceedings.

Q. You could have forfeited it, but didn't?

A. Yes.

Q. Did you hold the car there for a time then under your lien for repairs?

A. We didn't lien it, no, sir.

Q. Then they were entitled to that car up until the time you actually forfeited the contract?

A. They were entitled to it if they had come in and paid their sundry account. They were also entitled under the arrangement if they would pay us \$300 on their sundry account and \$400 on the note account we would give it up.

Q. Their sundry account included the damages?

A. Yes, sure.

(Testimony of Robert Atkinson.)

Q. (By Mr. FALKNOR). They didn't pay the account and you have held the car all the time?
[224] A. Yes.

The COURT.—I would like to ask this witness one question about the sundry account, whether that included anything else than the car repairs?

A. Yes, sir, it included an item of \$72 for sundries that were purchased by Mr. Hunt prior to the time that the accident occurred, as the statement will show.

Q. (By Mr. FALKNOR.) Do I understand that after you sold the car you no longer charged any account to the Hunts, repairs or anything else?

A. No. No.

Q. And the Pacific Car Company now has no bill against the Hunts? A. No.

Q. And the Pacific Car Company paid for these repairs?

A. They paid for these repairs and charged them off in the maintenance account when the car was sold.

Q. (By Mr. BEVINGTON.) In view of the Court's question; this exhibit No. 7, the total of \$529.-73, the \$72.63 that you marked here in pencil, deducting that, leaving the balance of \$457.10, is the amount of the sundry account that you say should be deducted and is not included in the items of repair for damage to the car?

A. Now, Mr. Bevington, you remember that I made the statement that there were some items here of tires, two rims and a cover, that were not entered by the bookkeeper, or by anyone, so far as I know, in

(Testimony of Robert Atkinson.)

the employ of the Pacific Car Company. They seem to have been put in there, added to the original statement that we sent to Mr. Hunt, a total of \$121.96, making the grand total of \$529.73. [225] Now, so far as the Pacific Car Company is concerned we only had \$397.83 against him. Where he bought these tires or anything about that, or how he got these figures, I don't know. These were never charged to him by us because they were never purchased by us.

Q. Then the Court is right about excluding this. They would amount to about how much apiece?

A. I will tell you. Assuming that his figures are correct; I haven't looked it up, and the prices of tires change, but I believe that his prices are about right on the tires. I know they are right on the rims because the rims are \$4.50, apiece and he has \$9.00 charged for rims; and one cover, \$4.50, is right also. As to the tires it is approximately right if they had been purchased at that time.

Q. If the tires and the rim and the cover were included in the damage items then the total of \$457.10 would be approximately right? A. Yes.

Mr. BEVINGTON.—We will reoffer Exhibit No 7 for identification with the explanation.

Mr. FALKNOR.—I object as immaterial.

The COURT.—Objection sustained.

(Witness excused.) [226]

[Testimony of Charles Lidston, for Defendants.]

CHARLES LIDSTON, produced as a witness on behalf of defendant, being first duly sworn, testifies as follows:

Q. (By Mr. FALKNOR.) State your name?

A. Charles Lidston.

Q. You are one of the investigators of the company? A. Yes, sir.

Q. I will ask you if you examined the car involved in this controversy? A. I did.

Q. When did you examine it, Mr. Lidston?

A. The day following the accident.

Q. Where was the car when you examined it?

A. Do you mean the street-car or the automobile?

Q. I mean the street-car, not the automobile.

A. It was at the Jefferson Street barn.

Q. Had any changes been made on the car between the time of the accident and the time you saw it?

A. No, sir.

Q. What damage, if any, had been done to the street-car?

A. The principal damage to the street-car was the scaling of the paint along the side of the car, and the knocking off of journal box covers. There was very little damage, that is, to put the car in commission.

Q. Could you see where the impact had first occurred on the car? A. I certainly could.

Q. Take this exhibit and show the jury where the impact first occurred between the car and the automobile. (Handing witness Defendant's Exhibit "A.")

(Testimony of Charles Lidston.)

Mr. HAMMOND.—That is, as shown in the picture.

Q. And as it appeared at the time you examined the car.

A. This is a photograph of Car No. 361 taken the day following the accident. The marks shown on the car began at this door, close between the two doors. There are two doors. This appears to be a door, but it is not a door that moves. This is the door that operates. This is the front end of the car, where the motorman is. The marks on this car began here. (Indicating.) They were very fresh and easy to observe. They began right at the center, between the fixed panel and the door which opens, and you can easily trace them back on the picture, and the journal box down here in the middle wheel of the truck, and also took the rear one on the rear end. This shows it on the picture.

Q. Were there any marks on the front of the car, in front of where the impact had first occurred on the door; were there any marks near the front of the car beyond the marks where you first mentioned?

A. There were no distinct, fresh marks showing further in front of the car than right here. (Indicating.)

Cross-examination.

Q. (By Mr. HAMMOND.) Mr. Lidston, were you present when this picture was taken?

A. Yes, sir.

Q. Had you seen the car in the meantime?

A. No, sir.

Q. You didn't see this car from the day of the ac-

(Testimony of Charles Lidston.)

cident until [228] the next day?

A. No. I told the dispatcher not to have anything done with the car.

Q. I don't care what you told somebody else, but whether or not you saw the car during that time?

A. I answer the question "no."

Q. Now, you say the first marks that you saw were on the front door here, or this stationary part?

A. Between the panel and the door, back of the front door.

Q. Just point to that again for me, will you, please, the exact point where you first saw it?

A. Right there. (Indicating.)

Q. If this point here had struck the rubber wheels of the automobile it probably would not show?

A. It would not scratch the paint, I don't think.

Q. What is the distance from this point indicated as the stationary door, the rear of that stationary panel to where the motorman stands in front?

A. He stands practically opposite this door.

Q. What is that distance?

A. The distance from here? (Indicating.)

Q. No, from here, the rear of that panel, to where the motorman stands?

A. The mark begins here.

Q. I am not speaking of the mark, what is that distance? A. Four feet.

Q. What is the distance from there to the middle of the car, from the rear side of that panel to the middle of the car?

A. From the rear of this door to here? (Indicating.)

(Testimony of Charles Lidston.)

Q. Yes. [229]

A. Practically fourteen feet.

Q. Then it would be practically fourteen plus four, eighteen feet from the middle of the car to where the motorman stands? A. Yes.

Q. It is the same distance from what you might call the lobby or rear of the car, the vestibule?

A. Practically the same.

Q. The only mark you observed was in this platform, beginning there? (Indicating.)

A. Beginning there and continuing back, as you can see.

Q. What is the width of this door? A. Two feet.

Q. And about how high is this first scratch on the door, just back of the door, from the rail?

A. It is about twenty-two inches.

Q. It is down below the top of the car wheel, isn't it? A. Yes.

Q. It is two feet, practically, to this iron band here? A. Yes.

Q. That iron band stands out about two inches from the car? A. It stands out a great deal more.

Q. How much further out?

A. All of six inches.

Q. It stands out six inches beyond the car, this iron band here? A. Yes.

(Witness excused.) [230]

[Testimony of Robert Atkinson, for Defendant (Recalled).]

ROBERT ATKINSON, recalled as a witness on behalf of defendant, testifies as follows:

Q. (By Mr. FALKNOR.) Who steered the car in

(Testimony of Robert Atkinson.)

that day from the accident; took the wheel as the automobile was brought in to the car company's shops? A. Mr. Hunt.

Q. (By Mr. BEVINGTON.) You pulled the car in with a tow car?

A. Yes. I drove a truck out there to get the car, and towed the Hudson automobile in.

Q. And Hunt sat in his own car?

A. You remember you and Mr. Hunt sat in the Hudson car.

Q. I went down with you.

A. No, it was the mechanic; I beg your pardon.

(Witness excused.)

Mr. FALKNOR.—At this time I wish to offer in evidence certified copies of certain portions of city ordinance—I offer in evidence a certified copy of subdivisions 19 and 22 of Section 2 of Ordinance No. 24597.

Mr. HAMMOND.—It is not pleaded, or set up in the pleadings at all, or raised in any way by the defendant in this case.

Mr. BEVINGTON.—It is incompetent, irrelevant and immaterial for that reason.

Mr. FALKNOR.—It is not necessary under the pleadings. I pleaded contributory negligence.

The COURT.—What is the ordinance?

Mr. FALKNOR.—The ordinance bears upon the question of care [231] and right of way and speed under which automobiles can be operated. I pleaded contributory negligence in general terms. They

(Testimony of Robert Atkinson.)

didn't ask me to specify in what way they were negligent.

(Argument by counsel.)

The COURT.—Objection overruled. In this state the burden of proof is upon the defendant to show the contributory negligence. In some states the burden of proof is upon the plaintiff to show he was not negligent. In this state the burden of proof is reversed. Under the allegations in the reply I think this is admissible.

Mr. HAMMOND.—You will allow us an exception.

The COURT.—Oh, yes.

(Certified copy of portions of ordinance admitted in evidence and marked "Defendant's Exhibit B.")

Mr. FALKNOR.—I now offer a certified copy of a portion of Section 2 of Ordinance No. 24597.

The COURT.—What is that?

Mr. FALKNOR.—It bears upon the manner in which they shall turn from one street into another.

Mr. HAMMOND.—We have one more objection to this. There is nothing in this as I see now to show that this ordinance was in force on the 23d day of September, 1913. They revise these ordinances every thirty days, practically, and there is nothing in the ordinance to show that it was in force upon the 23d day of September, 1913.

The COURT.—Objection overruled.

(Exception noted for plaintiffs.)

(Certified copy of portion of ordinance received in evidence and marked "Defendant's Exhibit C.") [232]

Mr. FALKNOR.—I offer a certified copy of Ordinance No. 32263, which pertains particularly to the speed of automobiles. Of course you concede that Cherry Street and 27th Avenue at the time and place of the accident were both paved?

Mr. HAMMOND.—Oh, yes, 27th Avenue and Cherry Street were both paved.

(Certified copy of ordinance received in evidence and marked “Defendant’s Exhibit D.”)

Mr. FALKNOR.—The defendant rests, your Honor.

Here the defendant rests. [233]

[Testimony of M. A. Hunt, for Plaintiffs (Recalled in Rebuttal).]

M. A. HUNT, recalled as a witness on behalf of plaintiffs in rebuttal, testifies as follows:

Q. (By Mr. BEVINGTON.) You heard the testimony of the motorman, Mr. Graff? A. Yes, sir.

Q. You may state to the jury whether after this accident occurred the motorman came back and this conversation, or this in substance took place between you and said motorman; that you said to the motorman: “Why did you run down there at that rate of speed and not try to stop or ring the bell until you hit me?” And the motorman saying in reply thereto, “I didn’t see you”?

Mr. FALKNOR.—I object as suggestive and leading.

Mr. BEVINGTON.—It is the question that was put to the motorman.

The COURT.—Let him answer.

(Testimony of M. A. Hunt.)

(Exception noted for defendant.)

A. Yes, sir.

Mr. BEVINGTON. That is all.

Mr. FALKNOR.—That is all.

(Witness excused.) [234]

[Testimony of Allen Smith for Plaintiffs (Recalled in Rebuttal).]

ALLEN SMITH, recalled as a witness on behalf of plaintiffs in rebuttal, testifies as follows:

Q. (By Mr. BEVINGTON.) Mr. Smith, you heard the testimony of the motorman, Mr. Graff?

A. Yes, sir.

Q. After this accident you may state to the jury whether or not the motorman came back and had this conversation; that this in substance took place between Mr. Hunt and said motorman; that Mr. Hunt said to the motorman, "Why did you run down there at that rate of speed and not try to stop or ring the bell until you hit me?" and the motorman replied, "I didn't see you"? A. Yes, sir.

Q. (By Mr. FALKNOR.) Just those exact words? A. Just those exact words.

Q. You were standing there rolling the cigarette at the same time? A. Yes.

Q. Where do you live now? A. 4213 Bellevue.

Q. How long have you been living in Seattle?

A. Since the 14th day of March, 1913.

Q. Where did you live before that?

A. Why, I lived in Arkansas.

Q. How long did you live there?

A. I was born and raised there.

(Testimony of Allen Smith.)

Q. You came from Arkansas here? A. No.

Q. Where did you go from Arkansas? [235]

A. To Portland.

Q. Did you go directly to Portland?

A. No, sir, I came to Seattle first.

Q. You came to Seattle from Arkansas?

A. 1901, the 28th of March.

Q. Where did you go?

A. I have been a road man ever since.

Q. Where did you go?

A. I could not tell you, I have been so many places. I have been working all over Washington, Oregon and Montana.

Q. Where else haven't you been?

A. Well, there is a good many places.

Q. You are a kind of a globe trotter, aren't you?

A. Not exactly.

Mr. HAMMOND.—We object to this as impertinent.

The COURT.—The question has been answered.

(Witness excused.)

Mr. HAMMOND.—Did you introduce these photographs in evidence?

Mr. FALKNOR.—No.

Mr. HAMMOND.—Do you object to their being introduced?

Mr. FALKNOR.—No, put them in if you want to.

(Photographs received in evidence and marked "Defendant's Exhibits E and F.")

Mr. BEVINGTON.—Counsel suggested that he wanted the jury to see the car.

(Testimony of Allen Smith.)

Mr. FALKNOR.—Now, your Honor, I explained that. If the car had not been in another accident I would be only too glad for the jury to see it. [236]

The COURT.—I don't think under the testimony in this case that the jury could gather any information by inspecting the car. I think both sides have gone into this matter very fully. There is nothing that the jury can determine by viewing the premises that would justify the Court in having the premises viewed.

Mr. HAMMOND.—I think that is all, your Honor.

Mr. FALKNOR.—Your Honor, there are one or two matters I would like to present to your Honor briefly.

The COURT.—The jury may be excused from the courtroom until called.

(Whereupon the jury leaves the courtroom.)

[Motion of Defendant for Directed Verdict, etc.]

Mr. FALKNOR.—The defendant at this time, your Honor, challenges the sufficiency of the testimony to sustain a verdict for the plaintiff, and requests your Honor to withdraw the case from the consideration of the jury and direct them to return a verdict for the defendant. Now, I do that for the reason that under the ordinances the street-car company has the right of way, and that anyone approaching the street as Mr. Hunt was, knowing that it was a street upon which street-cars were operated, and going by any obstruction where his view of an approaching car would be obstructed, was obligated to go in such a way and in such a manner and at such a speed that

if a car was coming he could stop his automobile in time to avoid a collision.

The COURT.—I don't think I care to hear from you, Mr. Falknor, upon this one proposition, at least. I think this matter must be submitted to the jury.

(Argument by Mr. FALKNOR.) [237]

The COURT.—This is a matter for the jury.

Mr. FALKNOR.—I am not feeling any too well, anyway, and I anticipate your Honor is against me on my general motion.

The COURT.—Yes, the motion is denied. Exception allowed.

(Exception noted for defendant.)

Mr. FALKNOR.—I want to make another motion.

The COURT.—I was going to give you my view upon that phase. Irrespective of some other elements that might enter into the case there is some testimony here that this automobile ran up to the street-car track, right near it, and stopped and was there, and the motorman of the approaching car could see him for a sufficient distance to stop the car.

Mr. FALKNOR.—There isn't any evidence to that effect.

The COURT.—The plaintiff testified to that, and if the car was there and the motorman saw he was in that dangerous condition then the car had no right to run him down. That is a matter the jury must determine, and it is not for the Court to say.

Mr. FALKNOR.—I don't think, Your Honor, that the doctrine of last clear chance is in this case.

The COURT.—There is no doctrine of last clear chance in that sense.

Mr. FALKNOR.—This is what is in my mind. That plaintiff did not testify how far the street-car was from him when he brought his automobile to a stop, but they both testified that they met contemporaneously, especially Mr. Bevington.

The COURT.—I don't care to argue it with you.

Mr. FALKNOR.—Then at this time I ask that the Court withdraw from the consideration of the jury all evidence as to the damage to the car, for the reason that the evidence shows [238] that neither of the plaintiffs ever paid the damages, and they are not now obligated to pay the damages.

The COURT.—What do you say to that.

Mr. HAMMOND.—I have this to say, that until this car was taken from him he had the right to use the car.

The COURT.—No, the element of damages to the car, for the repairs.

Mr. HAMMOND.—Oh, for the repairs.

The COURT.—That is what you asked to have withdrawn from the jury, the claim for repairs?

Mr. FALKNOR.—Yes, the claim for repairs.

Mr. HAMMOND.—I am not sure about that myself.

The COURT.—I am. I think it should be withdrawn.

Mr. HAMMOND.—I am inclined to think probably that is right.

The COURT.—That part of the motion will be granted.

Mr. HAMMOND.—As to the repairs?

The COURT.—Yes.

(Whereupon the Court takes a short recess, after which the jury returns to the courtroom, and are conceded to be all present by both sides.)

(Whereupon the case is argued to the jury by Messrs. Hammond, Falknor and Bevington following which the Court instructs the jury, and the jury retires to consider of their verdict.) [239]

[Instructions of Court to Jury.]

Second Exception.

The Court instructs the jury as follows:

The COURT.—The issue which is submitted to you, gentlemen of the jury, and which is for you to determine, is made by the complaint of the plaintiffs in this case, the answer to this complaint, and the reply. These pleadings you may take to your jury room, but they are not to be considered as evidence in the case. You will find the complaint has two counts. That simply means there is a separate statement of two claims for recovery. You can read these pleadings over in the jury-room if you care to do so, and wherever an allegation is made in the complaint and admitted in the answer that establishes that fact. No proof need be offered upon that allegation. Where there is an allegation made in the complaint and the defendant states it has neither knowledge or information sufficient to form a plea with relation to that particular allegation, that amounts in law to a denial and must be proven the same as those specifically denied, and wherever a denial appears in the answer to any matter set forth in the complaint, or a denial of any matter set forth in the affirmative defense that must be established by a fair

preponderance of the evidence.

The defendant in this case has pleaded what in terms of law is contributory negligence on the part of the plaintiff; that is, such conduct on the part of the plaintiff, Mr. Hunt, which was the proximate cause of the injury, and without which the injury would not have happened.

The burden of proof is upon the defendant to establish that fact by a fair preponderance of the evidence upon all [240] of the matters in the complaint which are denied. The burden is upon the plaintiffs to establish those facts by a fair preponderance of the testimony.

The issue, very briefly stated, is this: The plaintiff, Mr. Hunt, states that he and Mary A. Hunt are husband and wife, and are a community under the law of the state, and alleges that on the day named in the complaint here, about the 23d day of September, 1913, the community was the owner of an automobile, and Mr. Hunt was driving this automobile along 27th Avenue over onto Cherry Street, on which the defendant railway company is operating a street railway line, and this car was operated in such a negligent manner and at such an excessive rate of speed that as he entered upon this street this street-car ran into his automobile and injured the automobile and injured himself.

In the one cause of action he states the injury to the automobile, and sets forth the amount of recovery, and in the next count he states practically the same facts and then recites the injury which was done to himself personally, and enumerates the money dam-

age which he seeks to recover.

These counts simply mean under the law that when a man has two claims he has got to set them up separately, and all you are concerned with in relation to these is simply the facts. There are two claims for recovery, one for the automobile and the loss of the use of the automobile, and the other for the injury to himself individually.

As I stated a moment ago, the defendant says that if any injury happened on this occasion it was brought about [241] by the negligence of the plaintiff himself which contributed to it as the proximate cause thereof.

The burden of proof is upon the plaintiff to establish, as I said a moment ago, all of the facts of his complaint by a fair preponderance of the evidence, and upon the matter of contributory negligence that must be established by the defendant by the same preponderance.

Now, what is meant by preponderance of the evidence is not the greater number of witnesses testifying to any fact or to a particular state of facts, but it is the testimony of the witnesses which carries the greatest convincing force or power to your minds. The testimony of one witness may outweigh the testimony of many witnesses if it is of such a character and of such a nature as to convince you of its truthfulness. In determining the weight or credit you desire to attach to the testimony of any of the witnesses you will take into consideration the attitude of the witness upon the witness stand, his manner and demeanor in testifying, his interest or lack of

interest in the result of this controversy, the reasonableness of the story which he reveals to you, and likewise the opportunity of the several witnesses for knowing the things about which they have testified; in fact, surround every witness who has testified before you with about the same tests, and treat him with the same relations that you would to any man in the ordinary affairs of life whose statements you may be considering, as to the weight that ought to be accorded to it. You will apply to each witness that has testified before you the same tests you would apply in the ordinary affairs of life, and if you find that any [242] witness has wilfully testified falsely concerning any material fact in the case you have the right to disregard his entire testimony except in so far as it may be corroborated by the testimony of other credible witnesses and the circumstances developed upon the trial of the case. You will surround all of these witnesses with the surroundings and environment as you gather it from the testimony with relation to this incident on this occasion, and then determine where the weight of the evidence is.

You are instructed that negligence in a legal sense is the failure to observe for the protection of the interests of another that degree of care and caution and vigilance which the circumstances demand, whereby such other person suffers an injury. It is the omission to do something which a reasonable and prudent man, guided by the directions which regulate the conduct of human affairs, would do, or the doing of something which a reasonably prudent man would not do.

The basis of liability in a negligence case is the violation of some legal duty to exercise care, and in your deliberations of this case you will consider this definition of negligence and will determine the degree of care that should be exercised by the persons upon whom responsibility may have been placed, as defined to you by these instructions, and then apply that degree of care to the facts in this case, and see whether there was any act of omission or commission which a reasonably prudent man under the circumstances would not have done, would not have been guilty of.

Now, contributory negligence is such conduct as [243] exhibits the want or lack of ordinary care which contributed to the acts of the defendant and resulted in the injury as the proximate cause of such injury, and without which conduct on the part of the plaintiff the injury would not have occurred, and as I stated to you a moment ago, the burden of proof in establishing that is upon the defendant.

In this case, in deliberating upon this case, you will determine, as I said a moment ago, the care an ordinarily prudent man under like circumstances would exercise, and then determine whether the plaintiff in this case, Mr. Hunt, did exercise that care upon this occasion, as was required of him, and whether his conduct contributed to the injury as the proximate cause thereof, or whether, even though the defendant may have been negligent in some instances, if that negligence did not result in the injury as the proximate cause thereof, or determine whether or not, even though the plaintiff was guilty of some neg-

ligence whether that contributed to the negligence of the defendant as the proximate cause thereof, or whether the negligence of the defendant was the cause of the injury as the proximate cause thereof.

You are instructed that ordinary care is such a degree of care and caution as a reasonably prudent man would use under like circumstances and conditions. The care required in operating street-cars, or by a person in driving upon the street in an automobile in front of approaching cars, is such as an ordinarily prudent and cautious man would exercise under like conditions and circumstances, and is proportionate to the danger to be guarded against [244] and the fatal consequences which are likely to come if it is omitted.

You are instructed that the relative rights and duties of the street-car company, the defendant in this case, in the operation of cars over and along the streets of the City of Seattle, and those pedestrians and drivers of automobiles, and other vehicles, are equal and reciprocal, and neither has a superior right of way upon said street over the other, except that the street railway car running upon fixed tracks can not turn out and get away as can other vehicles and automobiles, and it therefore has the right of way to the track upon which the rails are fixed, and that vehicles driven along the street in the same way that the car is running must give way and give the street-car the right of way. Each must operate upon the street with relation to such conditions, and it is the duty of the street railway company while operating its cars upon the street to keep constant and reason-

ably careful lookout for pedestrians, vehicles or automobiles upon the street or about to enter upon the street and upon its tracks, and the failure to do so would be negligence on the part of the company in the event that an injury occurred because of such omission to have this lookout.

The street-car must also, in moving along the street, sound a gong or ring a bell upon approaching a street crossing so as to advise persons of the approach of the car, and in this connection you are instructed that a person operating an automobile over and along the streets of the city is bound to exercise the same degree of care and caution in driving along the street and in crossing the [245] street as is the driver or motorman of a street-car, and that while the street-car can not be heedlessly moving along upon its track, neither can a person drive an automobile heedlessly over and upon the street-car track without exercising the same degree of care and caution as would be exacted from the street-car company.

You are instructed that the law considers the operation of a street-car and the operation of an automobile on a public street to have in them an element of danger to the public, and when operated at an excessive rate of speed to be a menace to public safety, and has therefore fixed a limit upon the speed at which they shall be operated in certain places, and when such vehicles are operated at a speed in excess of that provision within the restricted district and an injury is occasioned thereby, then the law presumes that the injury was the result of the excessive

speed, and casts the burden of proof upon such party to show that the injury, if any was occasioned, was not the result of its or his negligence, and when both parties, the plaintiff and defendant, run at excessive rates of speed it is for the jury to determine the conduct or negligence of which was the proximate cause of the injury.

You are instructed that by ordinance of the City of Seattle it is provided that no person shall propel or cause to be propelled any street-car within the business or settled residential districts of the city at a speed exceeding twelve miles per hour, and that under the provisions of this ordinance the operation of a street-car in the business or settled residential district in excess of twelve miles per hour, in case of an injury resulting from [246] such excessive speed, it would be presumed under the law that the company would be negligent in its operation. In the consideration of this ordinance it will be for you to determine the speed at which the car was operated, and in determining whether or not the car was moving at an excessive rate of speed you will take into consideration whether the point at which the collision occurred came within the limited districts in the ordinance as above stated, which limits the speed to twelve miles per hour, and if you find that it did and the car was running to exceed twelve miles per hour than it will be presumed in the first instance that the company was negligent if an injury resulted, and the burden of proof would be upon the company to show that it was in fact not negligent, even though the car was running at such excessive rate of speed,

and that the injury occasioned was caused by the negligence of the plaintiff as the proximate cause thereof. But if you should find that the place was not within the district restricted in the ordinance than you will determine whether the car was running at such a reasonable rate of speed which of itself was not negligent, taking into consideration all of the surroundings as disclosed by the evidence.

You are instructed likewise that under the law of the State the speed of an automobile in a city shall not be greater than twelve miles per hour, nor over a crossing of a street or crosswalk within the limits of any city at a greater speed than four miles per hour, and you are instructed that if a person does drive an automobile the restricted places in the city provided in the State statute at a greater speed than that provided and an [247] injury should occur, the presumption would be that the automobile driver was negligent, and the burden would shift upon the driver of the automobile under such circumstances to show that the excessive speed was not the proximate cause of the injury and therefore contributory negligence upon his part.

So that you may fully understand these instructions in view of the circumstances of this case I will say that I mean that if you should find that the automobile at issue was driven by the plaintiff at a greater speed than twelve miles per hour on 27th Avenue approaching Cherry Street, and more than four miles an hour in crossing Cherry Street, and an injury resulted, the presumption of law would be that he was guilty of negligence, and if he seeks to

recover for the injury resulting to himself the presumption would be that his contributory negligence was the proximate cause of the injury, and it would pass the burden upon him to show that his negligence did not contribute to the injury as the proximate cause thereof.

The fact that you may find that the automobile was driven at a greater rate of speed does not preclude recovery in this case if you should find that the rate of speed at which the automobile did cross the street there was not the proximate cause of the injury, but that the operation of the street car was the proximate cause which resulted in the injury.

You are further instructed that if you should find from the evidence in this case that the plaintiff was running his car along 27th Avenue and as he approached [248] Cherry Street, over which the street-car was operating, he stopped his car at or near the railway track of the defendant company and was unable immediately to start it again, and the place where he stopped was such a distance from the approaching car that the motorman could have seen him in time to stop the street-car, and the motorman saw him, or should have seen the condition in which he was and that he was unable to move his car, and failed to stop his car when he saw the peril in which the plaintiff with his automobile was in, and continued the speed of his car and ran into the automobile, under such circumstances the railway company would be charged with negligence, and would be liable for damages which followed, irrespective of any speed at which the automobile had been moving

prior to the time that it stopped.

But if you should find that the plaintiff was driving along 27th Avenue at a high rate of speed, and approached the street-car track at an excessive rate of speed, as defined in these instructions, and that the street-car coming down Cherry Street approached 27th Avenue at about the same time, and the automobile ran into the street-car, and you believe by a fair preponderance of the evidence that the speed at which the automobile was operating and the failure of the plaintiff to observe the approaching car was the proximate cause of the injury, and without which it would not have happened, under such circumstances the plaintiff's conduct would be, under the law, acts which contributed to the injury as the proximate cause thereof, and he could not recover.

You are instructed that the plaintiff in approaching [249] Cherry Street, upon which the railway track is situated, has the right to presume that the motorman in charge of the car would not run his car at an excessive rate of speed, nor in violation of the city ordinance, and also that the motorman would sound his bell or gong as he approached the street intersection, and would take the usual precautions in the operation of the car upon approaching the cross-street; and the motorman upon the street-car had the right to rely upon the fact that no person would run into the street upon which the railway track was situated at a greater rate of speed than that provided by law, and that a person would take the usual precautions by looking before driving upon the cross-street.

The duties between the plaintiff and the defendant company were reciprocal with relation to the conduct that should have been enjoyed or employed by either of them, and it is for you to determine which one was negligent with relation to the duty imposed in this case, and if you find that the defendant was negligent in the operation of its car, and that the plaintiff was free from contributory negligence which contributed to the resulting injury as the proximate cause thereof, but that the injury and damage was the proximate result of the defendant's conduct, then you will return a verdict for the plaintiff in this case.

But if you believe from the testimony in this case that the plaintiff was negligent in the operation of his automobile, and that his negligence resulted in the injury complained of as the proximate cause thereof, then the plaintiff could not recover in this case, and your [250] verdict must be for the defendant.

In determining this issue and in considering the conduct on the part of the motorman and the plaintiff in this case you will take into consideration the surroundings there as described by the witnesses; the apartment house upon the corner of 27th Avenue and Cherry Street, the movement of the car and the movement of the automobile, and observe from this testimony how far, or when the plaintiff saw the coming car or should have seen it if the automobile was operating at the rate permitted by law, and likewise whether the street-car motorman could have seen the automobile approaching if he had been looking and operating the car as the law limited, and from all

these determine who violated the duty which was imposed and fix it as you find it.

In this case if you should find that the defendant was not negligent or that it was negligent but that its negligence did not result in this injury as the proximate cause thereof, but that the contributory negligence of the plaintiff was the proximate cause thereof, then your verdict would be for the defendant in this case.

But if you find by a preponderance of the evidence in this case that the defendant was negligent and that the plaintiff was not negligent, or that the plaintiff may have been negligent, but that his negligence did not operate with relation to the injury, and was not the proximate cause thereof, but that the injury resulted from the negligence of the defendant, then you would return a verdict for the plaintiff in this case.

If you should determine for the plaintiff you are [251] instructed that you could not consider in this case any amount which the plaintiff claims for repairs to the automobile, as he never paid any of those charges and none are charged against him, as the testimony discloses.

You are instructed, however, that you may find for such reasonable service as he might have obtained out of the automobile if the injury had not been occasioned, up to the 5th day of February, 1914, and in determining what that was worth you will determine what the use of that car would be reasonably worth, not what the automobile would earn irrespective of any charges in its operation, but what it would rea-

sonably earn above the expenditures, and you will find for such sum as will reasonably compensate the plaintiff for any injury which he sustained himself. You will include such sum as he has paid out for doctors' bills or medicine as disclosed by the testimony, and not to exceed seventy-five dollars, and also such sum as will compensate him for time which he actually lost by reason of the injury. Now, these items can be established by direct and positive testimony, and you will base your conclusions upon these items upon the testimony which has been offered and admitted in this case, and then you can also return such an amount as the plaintiff sustained by reason of the pain and suffering, and such injuries as are reasonably certain to follow in the future.

No rule can be given you by the Court that shall govern you in determining what should be found, if anything. That is a matter that must be left with you as reasonable men and as based upon the testimony which has been placed [252] before you. You will take into consideration the testimony of the witnesses and analyse it and apply it to the plaintiff and to the injury which he suffered, and such as are reasonably certain to follow in the future, and determine what such sum should be, and determine that in a lump sum and add this to the other sums which you find him to be damaged for, loss of time and the doctors' and medicine charges, and insert it in your verdict.

You, gentlemen of the jury, will pass upon this matter fairly and impartially just the same as you would want twelve men to pass upon a matter in

which you might be interested in the same manner, either as plaintiff or as defendant. You will eliminate from your minds all questions of sympathy or prejudice either for one side or the other, and determine this question upon the basis of right and justice, and after you reach the stage of damages to place that upon a financial basis and determine what sum, in your honest judgment, will compensate the plaintiff for the damages which he reasonably sustained and are reasonably certain to follow in the future.

Two forms of verdict will be submitted. One is, "We the jury in the above-entitled case find for the defendant." If that is your verdict cause it to be signed by your foreman. The other form of verdict is as follows: "We the jury in the above-entitled case find for the plaintiffs and assess their damages in the sum of _____ dollars," which you will insert, and cause that to be signed by your foreman.

You are the sole judges of the facts in this case, and you must determine what the facts are. If I have referred [253] to any fact or indicated any opinion I have it was simply to illustrate or demonstrate some proposition of law. The Federal Court in this district does not comment upon the testimony at all or try to give to the jury any opinion the presiding judge may have of any fact, but that is left solely to the jury, and you must determine that yourself, and in determining that you will take into consideration the matters I have referred to in the consideration of the testimony of the several witnesses, and the law to govern the case you will take from the Court as I have given it to you.

(Whereupon exceptions are taken to the Court's instructions by counsel for both sides, and the jury retires to consider of their verdict.)

[Exceptions to Instructions.]

In the foregoing charge of the Court to the jury the Court gave the following instruction; "And when such vehicles are operated at a speed in excess of that provision within the restricted district and an injury is occasioned thereby, then the law presumes that the injury [254] was the result of the excessive speed, and casts the burden of proof upon such party to show that the injury, if any was occasioned, was not the result of its or his negligence"; To the giving of which, before the jury retired to consider of their verdict, the defendant duly excepted, which exception was allowed.

The above and foregoing transcript of the evidence introduced upon the trial, and offered in support of the defendant's first exception is all the evidence given upon the trial of the action, and the defendant offers the same, with all the exhibits, together with the Court's instructions heretofore set out, as a bill of exceptions in support of this its second exception.

[Third Exception.]

In the charge of the Court to the jury the Court gave the following instruction; "You are instructed that by ordinance of the City of Seattle it is provided that no person shall propel or cause to be propelled any street-car within the business or settled residential districts of the city at a speed exceeding twelve miles per hour, and that under the provisions of this ordinance the operation of a street-car in the busi-

ness or settled residential districts in excess of twelve miles per hour, in case of any injury resulting from such excessive speed, it would be presumed under the law that the company would be negligent in its operation''; To the giving of which, before the jury retired to consider of their verdict, the defendant duly excepted, which exception was allowed.

The above and foregoing transcript of the evidence [255] introduced upon the trial and offered in support of the defendant's first exception is all of the evidence given upon the trial of the action, and the defendant offers the same, with all exhibits, together with the Court's instructions set out in the defendant's second exception, as a bill of exceptions in support of this, its third exception.

[Fourth Exception.]

In the charge of the Court to the jury the Court gave the following instruction: If you find that it did and the car was running to exceed twelve miles per hour then it will be presumed in the first instance that the company was negligent if an injury resulted, and the burden of proof would be upon the company to show that it was in fact not negligent, even though the car was running at such excessive rate of speed, and that the injury occasioned was caused by the negligence of the plaintiff as the proximate cause thereof''; To the giving of which, before the jury retired to consider of their verdict, the defendant duly excepted, which exception was allowed.

The above and foregoing transcript of the evidence introduced upon the trial and offered in support of the defendant's first exception is all of the evidence

given upon the trial of the action, and the defendant offers the same with all the exhibits, together with the Court's instructions set out in the defendant's second exception, as a bill of exceptions in support of this, its fourth exception. [256]

[Fifth Exception.]

In the charge of the Court to the jury the Court gave the following instruction: "You are instructed, however, that you may find for such reasonable service as he might have obtained out of the automobile if the injury had not been occasioned, up to the 5th day of February, 1914." To the giving of which, before the jury retired to consider of their verdict, the defendant duly excepted, which exception was allowed.

The above and foregoing transcript of the evidence introduced upon the trial and offered in support of the defendant's first exception is all of the evidence given upon the trial of the action, and the defendant offers the same with all the exhibits, together with the Court's instructions set out in the defendant's second exception, as a bill of exceptions in support of this, its fifth exception.

WHEREUPON counsel for the defendant presents the foregoing as its bill of exceptions, in the above case, and prays that the same may be settled, allowed, signed and certified by the judge of said Court.

JAMES B. HOWE,
A. J. FALKNOR,
Attorneys for Defendant. [257]

*In the District Court of the United States for the
Western District of Washington, Northern Division.*

No. 2700.

M. A. HUNT and MARY A. HUNT, His Wife,
Plaintiffs,

vs.

PUGET SOUND TRACTION, LIGHT & POWER
COMPANY, a Corporation,
Defendants.

Order Allowing Bill of Exceptions.

The foregoing Bill of Exceptions having been duly served upon the attorneys for said plaintiffs within due time, and ten days having elapsed after such service, and said plaintiffs not having proposed any amendment or amendments to said Bill of Exceptions, the said Bill of Exceptions having been duly delivered by the opposing party to the Clerk of said Court for the Judge thereof, and said Clerk having delivered said Bill of Exceptions to said Judge and the said Judge having duly designated a time for settling said Bill of Exceptions and said Clerk having duly notified and informed both parties to said action of the time so designated, and said Bill of Exceptions conforming to the truth and being in proper form;

Now, therefore, I the undersigned Judge of the above named Court and the Judge who tried the above-entitled action, hereby certify that the above and foregoing Bill is a true Bill of Exceptions and the same is approved, allowed and settled, and

ordered filed in and made a part of the record in said cause.

Done in open Court this 21st day of Nov, 1914.

JEREMIAH NETERER,

Judge. [258]

*In the District Court of the United States for the
Western District of Washington, Northern Division.*

No. 2700.

M. A. HUNT and MARY A. HUNT, His Wife,
Plaintiffs,

vs.

PUGET SOUND TRACTION, LIGHT & POWER
COMPANY, a Corporation,
Defendant.

**Affidavit [of A. J. Falknor Re Bill of Exceptions,
etc.].**

State of Washington,
County of King.—ss.

A. J. Falknor, being first duly sworn, on oath says: That he is now and ever since the commencement of the foregoing entitled action has been one of the Attorneys of Record for the defendant; that the proposed Bill of Exceptions herein was served upon the attorneys for plaintiffs, as appears by the acknowledgment thereon, on the 26th day of October, 1914; that more than ten days have elapsed since such service and that the said plaintiffs have not proposed any amendment or amendments to said Bill of Exceptions, and affiant, as one of the attorneys for the

said defendant, delivers said Bill of Exceptions to the Clerk of the above-entitled Court for the Judge thereof.

A. J. FALKNOR.

Subscribed and sworn to before me this 7th day of November, 1914.

[Seal]

R. E. SHARPE,

Notary Public in and for the State of Washington,
Residing at Seattle.

Copy of the within Bill of Exceptions proposed by Defendant, received and due service acknowledged this 26th day of October, 1914.

T. F. BEVINGTON,

F. E. HAMMOND,

Attorneys for Plaintiffs.

[Indorsed]: Defendant's Proposed Bill of Exceptions. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Nov. 21, 1914. Frank L. Crosby, Clerk. By Ed. M. Lakin, Deputy.

[259]

**[Request of Plaintiffs to Set Aside Verdict of Jury
and Cause be Set Down for New Trial, etc.]**

*In the District Court of the United States for the
Western District of Washington, Northern Divi-
sion.*

No. 2700.

M. A. HUNT and MARY A. HUNT, His Wife,
Plaintiffs,

vs.

PUGET SOUND TRACTION, LIGHT & POWER
COMPANY, a Corporation,
Defendant.

To the Honorable District Court of the United States
for the Western District of Washington, North-
ern Division, Honorable JEREMIAH NET-
ERER, Judge:

Come now the above named plaintiffs, M. A. Hunt
and Mary A. Hunt, his wife, by Hammond & Ham-
mond, and T. F. Bevington, Esq., their attorneys, and
without confessing any errors on the part of the Jury
or this Honorable Court herein, request this Honor-
able Court to set aside the verdict of the Jury, hereto-
fore rendered in this cause, and the judgment entered
in this Court on the 2d day of November, A. D. 1914,
in favor of the plaintiffs and against the defendant,
and that said cause be set down for a new trial; the
said plaintiffs hereby consenting to said order, and

move this Honorable Court to enter an order to that end.

T. F. BEVINGTON,
HAMMOND & HAMMOND,
Attorneys for Plaintiffs.

Consent to New Trial.

Copy of within Request and Consent for New Trial received and acknowledged this 20th day of November, 1914.

JAMES B. HOWE,
A. J. FALKNOR,
Attorneys for Deft. [260]

[Indorsed]: Request and Consent for New Trial. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Nov. 20, 1914. Frank L. Crosby, Clerk. By Ed. M. Lakin, Deputy. [261]

*In the District Court of the United States for the
Western District of Washington, Northern Division.*

No. 2700.

M. A. HUNT and MARY A. HUNT, His Wife,
Plaintiffs,

vs.

PUGET SOUND TRACTION, LIGHT & POWER
COMPANY, a Corporation,
Defendant.

Order Denying Request of Plaintiffs for New Trial.

Now, on this —— day of November, 1914, this matter coming regularly on to be heard by the Court, on the written request of the plaintiffs to set aside the verdict of the Jury, and the judgment heretofore entered thereon by this Court, and to set said cause down for retrial; the plaintiffs appearing by T. F. Bevington, Esq., and Hammond & Hammond, their attorneys, and the defendant appearing by James B. Howe, Esq., and A. J. Falknor, Esq., its attorneys; the defendant by its attorneys, in open Court objects to the granting of said request, unless the plaintiffs will pay all expenses to date and concede the trial Court to be in error as to the matters and things set forth in defendant's assignments of error; and said counsel for plaintiffs refusing to concede any error in the trial of the cause, or pay said expense, and counsel for defendant insisting upon their right to proceed with the review of the cause in the Circuit Court of Appeals; and the Court having heard the statements of counsel and the same having been fully submitted and duly considered;

Now, therefore, it is hereby considered, ordered and adjudged that the said request of said plaintiffs for a new trial, be, and the same is hereby denied.

Done in open Court this 23d day of November, A. D. 1914.

JEREMIAH NETERER,
Judge. [262]

Copy of within Order received and due service of same acknowledged this 23d day of November, 1914.

JAMES B. HOWE,
A. J. FALKNOR,
Attorneys for Defendant.

[Indorsed]: Order Denying Request of Plaintiffs for New Trial. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Nov. 24, 1914. Frank L. Crosby, Clerk. By Ed. M. Lakin, Deputy.

*In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.*

No. 2700.

M. A. HUNT and MARY A. HUNT, His Wife,
Plaintiffs,

vs.

PUGET SOUND TRACTION, LIGHT & POWER
COMPANY, a Corporation,
Defendant.

Assignment of Errors.

Comes now the Puget Sound Traction, Light & Power Company, a Corporation, the defendant above named, in connection with its petition for writ of error herein, and makes the following assignment of errors, and particularly specifies the following as the error upon which it will rely and which it will urge upon the prosecution of its said writ of error in the above-entitled cause, and which it avers occurred upon the trial of said cause, to wit:

I.

The Court erred in rendering judgment in favor of the plaintiffs and against the defendant.

II.

The Court erred in overruling and denying defendant's challenge to the sufficiency of the evidence to sustain the verdict for the plaintiffs and in overruling defendant's motion to instruct the jury to return a verdict for the defendant. [263]

III.

The Court erred in giving the following instruction to the jury, to wit:

“And when such vehicles are operated at a speed in excess of that provision within the restricted district and an injury is occasioned thereby, then the law presumes that the injury was the result of the excessive speed, and casts the burden of proof upon such party to show that the injury, if any was occasioned, was not the result of its or his negligence.”

IV.

The Court erred in giving the following instruction to the jury, to wit:

“You are instructed that by ordinance of the City of Seattle it is provided that no person shall propel or cause to be propelled any street-car within the business or settled residential districts of the city at a speed exceeding twelve miles per hour, and that under the provisions of this ordinance the operation of a street-car in the business or settled residential districts in excess of twelve miles per hour, in case of any injury resulting from such excessive speed, it would be presumed under the law that the company

would be negligent in its operation.”

V.

The Court erred in giving the following instruction to the jury, to wit:

“If you find that it did and the car was running to exceed twelve miles per hour then it will be presumed in the first instance that the company was negligent if an injury resulted, and the burden of proof would be upon the company to show that it was in fact not negligent, even though the car was running at such excessive rate of speed, and that the injury occasioned was caused by the negligence of the plaintiff as the proximate cause thereof.”

VI.

The Court erred in giving the following instruction to the jury, to wit:

“You are instructed, however, that you may find for such reasonable service as he might have obtained out of the automobile if the injury had not been occasioned, up to the 5th day of February, 1914.” [264]

WHEREFORE said Puget Sound Traction, Light & Power Company, plaintiff in error, prays that said judgment of the District Court of the United States for the Western District of Washington, Northern Division, be reversed, and that said Court be instructed to grant a new trial of said cause.

JAMES B. HOWE,

A. J. FALKNOR,

Attorneys for Defendant.

[Indorsed]: Assignment of Errors. Filed in the U. S. District Court, Western Dist. of Washington,

Northern Division. Nov. 18, 1914. Frank L. Crosby, Clerk. By Ed. M. Lakin, Deputy. [265]

*In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.*

No. 2700.

M. A. HUNT and MARY A. HUNT, His Wife,
Plaintiffs,

vs.

PUGET SOUND TRACTION, LIGHT & POWER
COMPANY, a Corporation,
Defendant.

Petition for Writ of Error.

And now comes Puget Sound Traction, Light & Power Company, a corporation, defendant herein, and says: That on the 2d day of November, 1914, this court entered judgment herein in favor of plaintiffs above named and against the defendant above named, in which judgment and the proceedings had prior thereto in this cause certain errors were committed to the prejudice of this defendant, all of which will appear in detail from the assignment of errors which is filed with this petition.

WHEREFORE, this defendant prays that a writ of error issue in its behalf out of the United States Circuit Court of Appeals for the Ninth Circuit, for the correction of errors so complained of, and that a transcript of the record and proceedings with all things concerning the same, duly authenticated, be

sent to the United States Circuit Court of Appeals for the Ninth Circuit.

JAMES B. HOWE,
A. J. FALKNOR,

Attorneys for Defendant. [266]

[Indorsed]: Petition for Writ of Error. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Nov. 18, 1914. Frank L. Crosby, Clerk. By Ed. M. Lakin, Deputy. [267]

*In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.*

No. 2700.

M. A. HUNT and MARY A. HUNT, His Wife,
Plaintiffs,

vs.

PUGET SOUND TRACTION, LIGHT & POWER
COMPANY, a Corporation,
Defendant.

**Order Allowing Writ of Error [and Fixing Amount
of Bond].**

On this 18th day of November, 1914, came the defendant Puget Sound Traction, Light & Power Company, a corporation, by its attorneys, and filed herein and presented to the Court its petition, praying for the allowance of a writ of error and an assignment of errors intended to be urged by it, praying also that a transcript of the record and proceedings in said cause, with all things concerning the

same, be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

On consideration whereof, the Court does hereby allow the writ of error prayed for. It is further ordered that a bond, in the sum of Fifteen Hundred Dollars (\$1500.00), conditioned according to law, be executed in behalf of the above-named defendant, with good and sufficient surety, to be approved by the undersigned, and that upon said bond being executed, approved and filed, the said judgment in this cause shall forthwith be superseded and all proceedings in this cause stayed until the final determination of said writ of [268] error by the United States Circuit Court of Appeals for the Ninth Circuit.

Dated this 18th day of November, 1914.

JEREMIAH NETERER,

District Judge of the United States, for the Western
District of Washington, Presiding in said Circuit.

[Indorsed]: Order Allowing Writ of Error. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Nov. 18, 1914. Frank L. Crosby, Clerk. By E. M. L., Deputy. [269]

*In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.*

No. 2700.

M. A. HUNT and MARY A. HUNT, His Wife,
Plaintiffs,

vs.

PUGET SOUND TRACTION, LIGHT & POWER
COMPANY, a Corporation,

Defendant.

Bond on Writ of Error.

KNOW ALL MEN BY THESE PRESENTS,
that we, Puget Sound Traction, Light & Power Com-
pany, a corporation, defendant above named as prin-
cipal, and the Massachusetts Bonding & Insurance
Company, a corporation duly organized and existing
under and by virtue of the laws of the State of
Massachusetts, and duly authorized and empowered
to become surety upon bonds and to transact busi-
ness as a surety company in the State of Washington,
as surety, are held and firmly bound unto M. A. Hunt
and Mary A. Hunt, his wife, plaintiffs above named,
in the sum of Fifteen Hundred Dollars (\$1500.00),
lawful money of the United States, to be paid to said
M. A. Hunt and Mary A. Hunt, their heirs, execu-
tors, administrators and assigns, for which payment,
well and truly to be made, we do hereby bind our-
selves, our and each of our successors and assigns,
jointly and severally, firmly by these presents.

Sealed with our seals and dated at Seattle, Wash-

ington, this 18th day of November, A. D. 1914.
[270]

Whereas, lately, at a District Court of the United States, for the Western District of Washington, Northern Division, in a suit pending in said court, between M. A. Hunt and Mary A. Hunt, his wife, and Puget Sound Traction, Light & Power Company, a corporation, defendant, a judgment was rendered in favor of said plaintiffs and against said defendant in the sum of Five Hundred Dollars (\$500.00) and costs, and the said Puget Sound Traction, Light & Power Company having obtained a writ of error, and filed a copy thereof in the office of the clerk of said court, to reverse the judgment in the aforesaid suit, and a citation directed to said M. A. Hunt and Mary A. Hunt, plaintiffs, as aforesaid, citing and admonishing them to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the city of San Francisco, State of California, in said circuit;

Now therefore, the condition of the above obligation is such that if the said Puget Sound Traction, Light & Power Company shall prosecute its writ of error to effect and shall answer all costs and damages that may be awarded against it, including all just damages for delay and costs and interest on the appeal, if it shall fail to make its plea good, then the above obligation to be void; otherwise to remain in full force and effect.

It is hereby expressly agreed by said surety that in case of a breach of any condition hereof, the above-named District Court of the United States for the

Western District of Washington, Northern Division, may, upon notice to said surety of not less than ten (10) days, proceed summarily in the above-entitled action to ascertain the amount which said surety is bound to pay on account of such breach, and render [271] judgment therefor against said surety, and award execution therefor.

[Seal]

PUGET SOUND TRACTION, LIGHT &
POWER COMPANY,

By A. L. Kempster,

[Corporate Seal]

Manager.

Attest: JAMES B. HOWE,

Assistant Clerk.

MASSACHUSETTS BONDING & INSUR-
ANCE COMPANY,

By F. B. POTWIN,

Attorney-in-fact.

The foregoing bond is hereby approved as a bond on writ of error and supersedeas bond, this 18th day of November, 1914.

JEREMIAH NETERER,

Judge of the District Court of the United States,
Presiding in the United States District Court
for the Western District of Washington, North-
ern Division.

[Indorsed]: Bond on Writ of Error. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Nov. 18, 1914. Frank L. Crosby, Clerk. By E. M. L., Deputy. [272]

*In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.*

No. 2700.

M. A. HUNT and MARY A. HUNT, His Wife,
Plaintiffs,

vs.

PUGET SOUND TRACTION, LIGHT & POWER
COMPANY, a Corporation,

Defendant.

**Revised Order Directing Certification of Original
Exhibits.**

It is hereby ordered that Plaintiffs' Exhibits 1, 2, 3, 4, 5, 6, 8, 9, 10 and 11, and Defendant's Exhibits A, B, C and D, need not be set out by copy or otherwise in the transcript of record upon Writ of Error, but that the same shall be certified up to the Circuit Court of Appeals for the Ninth Circuit with the transcript of the Bill of Exceptions. This order is made in lieu of order Nov. 21, 1914.

Dated this 28th day of November, 1914.

JEREMIAH NETERER,

Judge.

[Indorsed]: Order Directing Certification of Original Exhibits. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Nov. 28, 1914. Frank L. Crosby, Clerk. By Ed. M. Lakin, Deputy. [273]

[**Writ of Error (Copy).**]

UNITED STATES OF AMERICA.

The President of the United States of America, to the Honorable, the Judges of the District Court of the United States, for the Western District of Washington, Northern Division, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment upon a verdict which is in the said District Court before you, or some of you, between M. A. Hunt and Mary A. Hunt, his wife, the original plaintiffs and defendants in error, and Puget Sound Traction, Light & Power Company, a corporation, the original defendant and plaintiff in error, manifest error hath happened to the damage of said Puget Sound Traction, Light & Power Company, plaintiff in error, as by its complaint appears, we being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at San Francisco, California, in said circuit, on the 18th day of December next; and that the records and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein *the* correct that error, which of right and according to law and custom of the United States ought to be done.

WITNESS the Honorable EDWARD DOUGLAS WHITE, Chief Justice of the Supreme Court of the United States, the 18th [274] day of November, in the year of our Lord one thousand nine hundred and fourteen.

FRANK L. CROSBY,
Clerk of the United States District Court of the
Western District of Washington.

[Seal]

By Ed. M. Lakin,
Deputy.

JEREMIAH NETERER,

Allowed by:

District Judge of the United States, Presiding in the
the District Court of the United States, for the
Western District of Washington, Northern Division.

Dated November 18th, 1914.

Received this 18th day of November, 1914, a true copy of the foregoing writ of error, for the defendant in error.

FRANK L. CROSBY,
Clerk of the District Court of the United States for
the Western District of Washington, Northern
Division.

ED. M. LAKIN,
Deputy. [275]

[Indorsed]: Original. No. 2700. In the District Court of the United States for the Western District of Washington, Northern Division. M. A. Hunt and Mary A. Hunt, his wife, Plaintiffs, vs. Puget Sound Traction, Light & Power Co., a Corporation, Defendant. Writ of Error. Filed in the U. S. District

Court, Western Dist. of Washington, Northern Division, Nov. 18, 1914. Frank L. Crosby, Clerk. By E. M. L. Deputy. James B. Howe. A. J. Falknor, P. O. and Office Address Room 403 Pacific Building. 7th Ave. and Olive St., Seattle, Wash. Attorneys for Defendant. [276]

*In the District Court of the United States for the
Western District of Washington, Northern Division.*

No. 2700.

M. A. HUNT and Mary A. HUNT, Plaintiffs,
Plaintiffs,

vs.

PUGET SOUND TRACTION LIGHT & POWER
COMPANY, a Corporation,
Defendant.

Citation on Writ of Error (Copy).

United States of America.

The President of the United States of America, to
M. A. Hunt and Mary A. Hunt, Greeting:

You are cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit, at the courtroom of said Court, in the City of San Francisco, in the State of California, within thirty (30) days after the date of this citation, pursuant to writ of error filed in the clerk's office of the District Court of the United States, for the Western District of Washington, Northern Division, wherein Puget Sound Traction, Light & Power Company is plaintiff in error, and you are defendants in

error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable EDWARD DOUGLAS WHITE, Chief Justice of the Supreme Court of the United States, the [277] 18th day of November, in the year of our Lord one thousand nine hundred and fourteen.

JEREMIAH NETERER,
Judge of the District Court of the United States,
Presiding in the District Court of the United
States for the Western District of Washington,
Northern Division.

Copy of within Citation received and service acknowledged this 18th day of Nov., 1914.

HAMMOND & HAMMOND,
T. V. BEVINGTON,
Attorneys for Plaintiff.

[Indorsed]: Original. No. 2700. In the District Court of the United States for the Western District of Washington, Northern Division. M. A. Hunt and Mary A. Hunt, his wife, Plaintiffs, vs. Puget Sound Traction, Light & Power Co., a Corporation, Defendant. Citation on Writ of Error. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Nov. 18, 1914. Frank L. Crosby, Clerk. By E. M. L. Deputy. James B Howe. A. J. Falknor P. O. and Office Address Room 403 Electric Building, 7th Ave. and Olive St., Seattle, Wash. Attorneys for Defendant. [278]

*In the District Court of the United States for the
Western District of Washington, Northern Division.*

No. 2700.

M. A. HUNT and MARY A. HUNT, his wife,
Plaintiffs,

vs.

PUGET SOUND TRACTION LIGHT & POWER
COMPANY, a Corporation,

Defendant.

**Acknowledgment of Service [of Papers on Writ of
Error].**

Due and timely service of Petition for Writ of Error, Assignment of Errors, Bond of Error, Order Allowing Writ of Error herein is hereby acknowledged by receipt of true and correct copies of petition for Writ of Error, Assignment of Errors, Bond on Writ of Error and Order Allowing Writ of Error on the 18 day of November, 1914.

HAMMOND & HAMMOND,

T. V. BEVINGTON,

Attorneys for Plaintiffs.

[Indorsed]: Acknowledgment of Service. Filed in the U. S. Dist. Court, Western Dist. of Washington, Northern Division, Nov. 18, 1914. Frank L. Crosby, Clerk. By E. M. L. Deputy. [279]

*In the District Court of the United States for the
Western District of Washington, Northern Division.*

No. 2700.

M. A. HUNT and Mary A. HUNT, his wife,
Defendants in Error,

vs.

PUGET SOUND TRACTION LIGHT & POWER
COMPANY, a Corporation,
Plaintiff in Error

Praeceptum for Transcript of Record.

To the Clerk of the Above-entitled Court:

You will please prepare, certify and forward, as provided by law, to the United States Circuit Court of Appeals, for the Ninth Circuit, as the record on writ of error to the District Court of the United States, for the Western District of Washington, Northern Division, a complete transcript of the following files, records and proceedings in the above-entitled cause, to wit:

Complaint.

Answer.

Reply.

Verdict.

Judgment.

Stipulation Extending Time to File Bill of Exceptions.

Order Granting Extension of Time to File Bill of Exceptions. [280]

Bill of Exceptions and Proof of Service Thereto Attached.

Assignment of Errors.

Petition for Writ of Error.

Order Allowing Writ of Error.

Bond on Writ of Error.

Writ of Error.

Citation on Writ of Error.

Acknowledgment of Service.

Order Directing Certification of Original Exhibits.

This Praecipe

JAMES B. HOWE,

A. J. FALKNOR,

Attorneys for Plaintiff in Error.

Waiver of Act of February 13, 1911.

We waive the provisions of the Act approved February 13, 1911, and direct that you forward type-written transcript to the Circuit Court of Appeals for printing as provided under Rule 105 of this Court.

JAMES B. HOWE,

A. J. FALKNOR,

Attorneys for Plaintiff in Error.

[Indorsed]: Praecipe of Transcript of Record. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Nov. 21, 1914. Frank L. Crosby, Clerk. By E. M. L. Deputy.
[281]

*In the District Court of the United States for the
Western District of Washington, Northern Divi-
sion.*

No. 2700.

M. A. HUNT and Mary A. HUNT, his wife,
Plaintiffs,

vs.

PUGET SOUND TRACTION LIGHT & POWER
COMPANY, a Corporation,
Defendant.

**Certificate of Clerk U S. District Court to Transcript
of Record, etc.**

United States of America,
Western District of Washington.—ss.

I, Frank L. Crosby, Clerk of the United States District Court for the Western District of Washington, do hereby certify the foregoing printed pages numbered from 1 to 281, inclusive, to be a full, true, correct and complete copy of so much of the record, papers and other proceedings in the above and foregoing entitled cause as are necessary to the hearing of said cause on Writ of Error therein in the United States Circuit Court of Appeals for the Ninth Circuit, and as is stipulated for by counsel of record herein, as the same remain of record and on file in the office of the Clerk of said District Court and that the same constitute the record on return to said Writ of Error herein from the Judgment of said United States District Court for the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify the following to be a full, true and correct statement of all expenses, costs, fees and charges incurred [282] and paid in my office by or on behalf of the Plaintiff in Error for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit in the above-entitled cause, to wit:

Clerk's fee (Sec. 828 R. S. U. S.) for making record, certificate or return—610 folios at 15¢.....	91.50
Certificate of Clerk to transcript of record— 4 folios at 15¢.....	.60
Seal to said Certificate.....	.20
Certificate of Clerk to Original Exhibits—3 folios at 15¢.....	.45
Seal to said Certificate....	.20

I further certify that Defendant in Error paid the following amount into my office:

Clerk's fee (Sec. 828 R. S. U. S.) for making copy of Request and Consent for New Trial and Order Denying Request of Plaintiffs for New Trial—5 folios at 15¢.	.75
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\$93.70

I hereby certify that the cost for preparing and certifying record amounting to \$92.95 has been paid to me by James B. Howe, Esq., and A. J. Falknor, Esq., Attorneys for Plaintiff in Error, and I further certify the sum of \$.75 has been paid me by T. F. Bevington, Esq., and Messrs. Hammond & Hammond, Attorneys for Defendants in Error.

I further certify that I hereby attach and herewith

transmit the original Writ of Error and original Citation issued in this cause.

IN WITNESS WHEREOF I have hereto set my hand and affixed the seal of this District Court at Seattle, in said District, this 2d day of January, 1915.

[Seal]

FRANK L. CROSBY,

Clerk. [283]

[Writ of Error (Original).]

UNITED STATES OF AMERICA.

The President of the United States of America, to the Honorable, the Judges of the District Court of the United States, for the Western District of Washington, Northern Division, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment upon a verdict which is in the said District Court before you, or some of you, between M. A. Hunt and Mary A. Hunt, his wife, the original plaintiffs and defendants in error, and Puget Sound Traction, Light & Power Company, a corporation, the original defendant and plaintiff in error, manifest error hath happened to the damage of said Puget Sound Traction, Light & Power Company, plaintiff in error, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at San Francisco, California, in

said circuit, on the 18th day of December next; and that the records and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, which of right and according to law and custom of the United States ought to be done.

WITNESS the Honorable EDWARD DOUGLAS WHITE, Chief Justice of the Supreme Court of the United States, the 18th [284] day of November, in the year of our Lord one thousand nine hundred and fourteen.

[Seal]

FRANK L. CROSBY,

Clerk of the United States District Court for the Western District of Washington.

By Ed. M. Lakin,
Deputy.

Allowed by:

JEREMIAH NETERER,

District Judge of the United States, Presiding in the District Court of the United States, for the Western District of Washington, Northern Division.

Dated Nov. 18th, 1914.

Received this 18th day of November, 1914, a true copy of the foregoing writ of error, for the defendant in error.

FRANK L. CROSBY,

Clerk of the District Court of the United States for the Western District of Washington, Northern Division.

Ed. M. Lakin,
Deputy. [285]

[Endorsed]: No. 2700. In the District Court of the United States, for the Western District of Washington, Northern Division. M. A. Hunt and Mary A. Hunt, His Wife, Plaintiffs, vs. Puget Sound Traction, Light & Power Co., a Corporation, Defendant. Writ of Error. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Nov. 18, 1914. Frank L. Crosby, Clerk. By E. M. L. Deputy. [286]

[Citation on Writ of Error (Original).]

*In the District Court of the United States for the
Western District of Washington, Northern Division.*

No. 2700.

H. A. HUNT and MARY A. HUNT, *Plaintiffs,*
Plaintiffs,

vs.

PUGET SOUND TRACTION, LIGHT & POWER
COMPANY, a Corporation,
Defendant.

UNITED STATES OF AMERICA.

The President of the United States of America, to
M. A. Hunt and Mary A. Hunt, Greeting:

You are cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit, at the courtroom of said court, in the city of San Francisco, in the State of California, within thirty (30) days after the date of this citation, pursuant to writ of error filed in the clerk's

office of the District Court of the United States, for the Western District of Washington, Northern Division, wherein Puget Sound Traction, Light & Power Company is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable EDWARD DOUGLAS WHITE, Chief Justice of the Supreme Court of the United States, the [287] 18th day of November, in the year of our Lord one thousand nine hundred and fourteen.

JEREMIAH NETERER,
Judge of the District Court of the United States,
Presiding in the District Court of the United
States for the Western District of Washington,
Northern Division. [288]

Copy of the within Citation received and service acknowledged this 18 day of Nov. 1914.

HAMMOND & HAMMOND,
T. V. BEVINGTON,
Attorneys for Plaintiff.

[Endorsed]: No. 2700. In the District Court of the United States, for the Western District of Washington, Northern Division. M. A. Hunt and Mary A. Hunt, His Wife, Plaintiffs, vs. Puget Sound Traction, Light & Power Co., a Corporation, Defendant. Citation on Writ of Error. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Nov. 18, 1914. Frank L. Crosby, Clerk. By. E. M. L., Deputy. [289]

*In the District Court of the United States for the
Western District of Washington, Northern Division.*

No. 2700.

M. A. HUNT and MARY A. HUNT, His Wife,
Plaintiffs,

vs.

PUGET SOUND TRACTION, LIGHT & POWER
COMPANY, a Corporation,
Defendant.

Order Enlarging Time.

Now, on this 12th day of December, 1914, upon motion of Messrs. James B. Howe and A. J. Falknor, and for sufficient cause appearing;

IT IS ORDEDED, That the time within which the Clerk of this Court may prepare, certify and transmit to the United States Circuit Court of Appeals the transcript of the record in this cause be, and the same is hereby extended to and including the 9th day of January, 1915.

JEREMIAH NETERER,
District Judge.

[Indorsed]: Order Enlarging Time. Filed in the U. S. District Court, Western Dist. of Washington, Dec. 12, 1914. Frank L. Crosby, Clerk. By Ed. M. Lakin, Deputy.

[Endorsed]: No. 2546. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Rule 16 Enlarging Time to—— to File

Record thereof and to Docket Case. Filed Jan. 4, 1915. F. D. Monckton, Clerk.

[Endorsed]: No. 2546. United States Circuit Court of Appeals for the Ninth Circuit. Puget Sound Traction, Light & Power Company, a Corporation, Plaintiff in Error, vs. M. A. Hunt and Mary A. Hunt, His Wife, Defendants in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the Western District of Washington, Northern Division.

Filed January 4, 1915.

FRANK D. MONCKTON,
Clerk of the United States Circuit Court of Appeals,
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

*In the Circuit Court of Appeals for the United States
for the Ninth Circuit.*

No. —.

PUGET SOUND TRACTION, LIGHT & POWER
COMPANY, a Corporation,

Plaintiff in Error,

vs.

M. A. HUNT and MARY A. HUNT, His Wife,
Defendants in Error.

**Praeipie for Entry of Appearance of Attorneys for
Plaintiff in Error.**

To the Clerk of the Above-named Court:

You will please enter our appearance as attorneys
for plaintiff in error in the above-entitled action.

JAMES B. HOWE,

A. J. FALKNOR,

Attorneys for Plaintiff in Error. Office Address:
403 Electric Building, Seattle, Washington.

[Endorsed]: No. 2546. In the Circuit Court of
Appeals of the United States for the Ninth Circuit.
Puget Sound Traction, Light & Power Company, a
Corporation, Plaintiff in Error, vs. M. A. Hunt and
Mary A. Hunt, His Wife, Defendants in Error.
Praeipie for Entry of Appearance of Attorneys for
Plaintiff in Error. Filed Jan. 4, 1915. F. D.
Monckton, Clerk.

*In the Circuit Court of Appeals of the United States
for the Ninth Circuit.*

No. —.

PUGET SOUND TRACTION, LIGHT & POWER
COMPANY, a Corporation,

Plaintiff in Error,

vs.

M. A. HUNT and MARY A. HUNT, His Wife,
Defendants in Error.

Statement of Record to be Printed.

To the Clerk of the Above-named Court:

You will please cause to be printed the entire record in the above-entitled action, including the certificate of the Clerk of the District Court of the United States for the Western District of Washington, thereto, this statement, the order of said District Clerk of said District Court to prepare and transmit to the above named court the record on appeal and return to writ of error, and the entry of appearance for plaintiff in error.

A statement of the documents to be printed, which includes the entire record in said action, is as follows:

1. This Statement.
2. Complaint.
3. Answer.
4. Reply.
5. Verdict.
6. Judgment.
7. Stipulation Extending Time to File Bill of Exceptions.

8. Order Granting Extension of Time to File Bill of Exceptions.
9. Bill of Exceptions and Proof of Service Thereto Attached.
10. Assignment of Errors.
11. Petition for Writ of Error.
12. Order Allowing Writ of Error.
13. Bond on Writ of Error.
14. Writ of Error.
15. Citation on Writ of Error.
16. Acknowledgment of Service.
17. Order Directing Certification of Original Exhibits.
18. Praecipe for Transcript of Record.
19. Plaintiff's Request for and Consent to a New Trial.
20. Order Denying Plaintiff's Request for and Consent to a New Trial.
21. Entry of Appearance for Plaintiff in Error.

JAMES B. HOWE,

A. J. FALKNOR,

Attorneys for Plaintiff in Error.

[Endorsed]: No. 2546. In the Circuit Court of Appeals of the United States for the Ninth Circuit. Puget Sound Traction, Light & Power Company, a Corporation, Plaintiff in Error, vs. M. A. Hunt and Mary A. Hunt, His Wife, Defendants in Error. Statement of Record to be Printed. Filed Jan. 4, 1915. F. D. Monekton, Clerk.